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Indiana.

Laws, statutes, etc.

Laws relating to the
assessment of property...

Indianapolis

1907

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INDIANA ASSESSMENT LAWS 1907



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LAWS

RELATING TO THE

ASSESSMENT OF PROPERTY FOR TAXATION

CONCERNING THE

DUTIES AND POWERS OF ASSESSORS, BOARDS
OF REVIEW, STATE TAX COMMISSIONERS AND COUNTY
AUDITORS

Issued by the State Board of Tax Commissioners

Prepared by
JAMES BINGHAM
ATTORNEY GENERAL OF INDIANA

INDIANAPOLIS :
WM. B. BURFORD, CONTRACTOR FOR STATE PRINTING AND BINDING
1907

EXPLANATION.

This pamphlet contains only those sections of the laws of the State of Indiana which designate what property is taxable, the manner of listing and assessing it for taxes, and the powers and duties of State, county and township officers relating to such listing and assessment. It contains nothing concerning the collection of taxes, nor anything relating to tax titles.

The figures and words in black-faced type at the beginning of each section are no part of the statutes; but have been inserted by the editor of this pamphlet for the convenience of those using it.

The figures following such black-faced type are the original sectional numbers of the several sections.

INDIANAPOLIS, October 1, 1907.

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LAWS OF TAXATION.

ARTICLE 1—WHAT ASSESSED.

1. Polls and Property.
2. Poll Tax.
3. Property Taxable.
4. Realty and Personality Defined—Lands Sold by State—Lands Reserved.

AN ACT concerning taxation, repealing all laws in conflict therewith, and declaring an emergency.

[Acts 1801, p. 199. Approved and in force March 6, 1801.]

1. Polls and Property—

1. *Be it enacted by the General Assembly of the State of Indiana*, That all taxes for the support of the government of this State shall be assessed on polls and on property listed and valued in an equal and ratable proportion (except such stocks and other property as may be specifically taxed) in the following manner, namely: The amount necessary and proper to be charged on each poll and on each hundred dollars' worth of property, for State expenditures and for school purposes, shall, from time to time, be fixed by law; and the amount to be charged on each poll and on each one hundred dollars' worth of property for county expenditures shall be determined by the Board of County Commissioners at their annual meeting in September. (3 Burns R. S. 1901, §8408.)

1. *Uniformity.*—The Constitution does not require a uniform method of valuation of property for taxation, but only such a method as will insure a just valuation. Louisville, etc., R. R. Co. v. State, 25 Ind. 177, 87 Am. Dec. 358. Whitney v. Ragsdale, 33 Ind. 107, 110; Adamson v. Auditor, 9 Ind. 174.

It is not necessary that the rate of taxation shall be uniform throughout the State, but it is only required that the rate of assessment and taxation shall be uniform and equal throughout the locality in which the tax is levied. Bright v. McCullough, 27 Ind. 223; Palmer v. Stumph, 29 Ind. 329; Lafayette, etc., R. R. Co. v. Geiger, 34 Ind. 185, 229; Marks v. Purdue University, 37 Ind. 155; Wiley v. Owens, 40 Ind. 429, 432; Loftin v. Citizens National Bank, 85 Ind. 341, 745; Board v. State, 147 Ind. 476, 492; 46 N. E. Rep. 908; Adams v. City of Shelbyville, 154 Ind. 497, 479; 57 N. E. Rep. 114; Board v. State, 155 Ind. 604, 600; 58 N. E. Rep. 1037; Gilson v. Board, 128 Ind. 65; 27 N. E. Rep. 235, 11 L. R. A. 885; Kerr v. Perry School Tp., 162 Ind. 310; S. C. 70 N. E. Rep. 246.

2. *Taxing Districts.*—The Legislature, in the exercise of its power as to taxation in making local improvements, may create a special taxing district without regard to the boundaries of the counties, townships or municipalities. Board v. Harrell, 147 Ind. 500; 46 N. E. Rep. 124; Byram v. Board, 145 Ind. 240; 44 N. E. Rep. 357; Lowe v. Board, 150 Ind. 167; 59 N. E. Rep. 466; Board v. State, 155 Ind. 604; 58 N. E. Rep. 1037; Davern v. Board, 34 Ind. App. 44; S. C. 72 N. E. Rep. 268.

3. *Right to Tax.*—The right of the State to tax its citizens, and their duty to pay the same, does not rest upon contract, but is limited only by the fundamental law of the State. Del'auw v. New Albany, 22 Ind. 204.

4. *Taxing Agencies of a Government.*—Neither the United States nor a State can tax the machinery or agencies employed by the other in the exercise of its governmental powers and functions. *State v. Garton*, 32 Ind. 1; 2 Am. Rep. 215.

5. *Power of Legislature.*—The power of taxation is vested in the Legislature, and it has the right to provide for the rate to be assessed and the locality or district upon which the taxes are to be imposed, and courts can not interfere with such legislative acts upon the ground that they impose oppressive taxes upon the taxpayers, so long as the Legislature keeps within the limits of its authority and violates no express provision of the Constitution. *Board v. State*, 147 Ind. 470; 49 N. E. Rep. 908; *Schneck v. Jeffersonville*, 152 Ind. 204, 212; 52 N. E. Rep. 212; *Kersey v. State*, 161 Ind. 471; 68 N. E. Rep. 1027. See *City of Terre Haute v. Kersey*, 159 Ind. 300; 64 N. E. Rep. 469; *Kersey v. City of Terre Haute*, 161 Ind. 471; 68 N. E. Rep. 1027; *Buck v. Beach*, 164 Ind. 37; 71 N. E. Rep. 963.

6. *Life Insurance Policies.*—Paid up non-forfeitable and partly paid up life insurance policies are not subject to taxation, as there is no statute providing any regulation for, or any manner of assessing or valuing such policies. *State Board of Tax Commissioners v. Holliday*, 150 Ind. 216; 49 N. E. Rep. 14; 42 L. R. A. 826.

7. *Regulations Necessary.*—Regulations and methods in all tax matters must be prescribed by law. *Adams v. Shelbyville*, 154 Ind. 467, 543; 57 N. E. Rep. 114; 49 L. R. A. 707; *State Board of Tax Commissioners v. Holliday*, 150 Ind. 216; 49 N. E. Rep. 14; 42 L. R. A. 826.

8. *Deducting Indebtedness.*—A statute permitting a deduction of indebtedness does not violate the rule requiring a uniform rate of taxation. *Florer v. Sheridan*, 137 Ind. 28; 36 N. E. Rep. 365; 23 L. R. A. 278.

9. *Uniformity as to Persons.*—Taxes levied for State purposes must not only be uniform and equal throughout the State, but must apply alike to all persons of the same class. *Henderson v. London Ins. Co.*, 135 Ind. 23; 34 N. E. Rep. 565; 20 L. R. A. 827; 41 Am. St. Rep. 410.

10. *Taxes Public Burdens.*—Taxes are public burdens, of which every individual may be compelled to bear his part, and that in proportion to the extent of protection he receives, or the amount of property held by him, as the will of the Legislature may direct. *Hanna v. Board*, 8 Blackf. 352, 355; *Boyer v. Jones*, 14 Ind. 354.

11. *Judicial Restraint—Power to Tax.*—There are no limits within which the power of taxation can be restrained by the courts, so far as regards the different kinds of property to which it may be applied, or the terms under which such property is held. The power of taxation is an incident of sovereignty, and co-extensive with that of which it is incident. It extends to all subjects over which the State's sovereign power extends, and the sovereignty of the State extends to everything which exists by its own authority or is introduced by its permission. *Hanna v. Board*, 8 Blackf. 352, 355.

12. *Tax Defined.*—The word tax means burden, charge or imposition, put or set upon persons or property for public uses. *Mitchell v. Williams*, 27 Ind. 62.

13. *Good Will—Uniformity.*—The good will of a newspaper is not, of itself, property, within the meaning of the constitutional mandate requiring the Legislature to provide for a uniform system of taxation of all property, except certain property that may be exempted. *Hart v. Smith*, 150 Ind. 182; 64 N. E. Rep. 661.

14. *Uniformity of Expenditure of Taxes.*—The clause of the Constitution requiring uniformity and equality in the rate of assessment and taxation of property within the tax district in which a particular tax is levied, applies only to assessments and taxation, and does not control the expenditure of money arising out of any assessment or taxation of property. *Kerr v. Perry School Tp.*, 162 Ind. 310; 70 N. E. Rep. 248.

15. *Power of Legislature.*—The power of the Legislature in the matter of taxation is unlimited except as restricted by the State or Federal Constitution. *Lowe v. Board*, 156 Ind. 103; 59 N. E. Rep. 406.

16. *Construction of Tax Laws.*—The tax law should not be construed from the standpoint of the taxpayer alone or the government alone; the real question is what was the intention of the Legislature. *Hart v. Smith*, 150 Ind. 182; 64 N. E. Rep. 661.

17. *Injunction.*—An injunction is the proper remedy against an illegal and void tax. *State v. Board*, 162 Ind. 580; S. C. 70 N. E. Rep. 984; *Meyer v. Town of Boonville*, 162 Ind. 166; S. C. 70 N. E. Rep. 146.

2. Poll Tax—

2. A poll-tax shall be assessed upon every male inhabitant of this State between the ages of twenty-one and fifty years, and every person shall be listed for his poll-tax in the township, town or city of his residence. (3 Burns R. S. 1901, §8409.)

1. *Poll Tax a Lien.*—A poll-tax is a lien upon the real estate of the person assessed with such tax. *Isaacs v. Decker*, 41 Ind. 410.

2. *Temporary Absence.*—Persons temporarily absent from the State, no matter for how long, do not lose their residence and are subject to taxation here. *Culbertson v. Board*, 52 Ind. 361.

3. *State Poll Tax.*—There is for the year 1907 and annually thereafter a State poll tax of fifty cents upon each legal voter. Acts 1907, p. 505.

4. *Exemption.*—There is the same exemption from this tax as exists respecting other poll taxes.—Bingham.

3. Property Taxable—

3. All property within the jurisdiction of this State, not expressly exempted, shall be subject to taxation. (3 Burns R. S. 1901, §8410.)

1. *Regulations to Assess Value Necessary.*—It is a legislative power to select the subjects for taxation, and the Constitution imposes the duty and limitation upon the Legislature of providing by law regulations or methods for a just valuation of all property, both real and personal, and where the Legislature does not prescribe such regulations as to any particular species of property such property can not be taxed. *State Board of Tax Commissioners v. Holliday*, 150 Ind. 216; 49 N. E. Rep. 14; 42 L. R. A. 826; *Riley v. Western U. Tel. Co.*, 47 Ind. 511.

2. *Property Awaiting Shipment.*—Property temporarily in this State awaiting shipment to the residence of the owner outside of this State is not subject to taxation here. *Standard Oil Co. v. Bachelor*, 89 Ind. 1; *Herron v. Keeran*, 50 Ind. 472; 26 Am. Rep. 57.

3. *Property Awaiting Shipment at Indefinite Time.*—But where property is collected, even though it may be at the point of final shipment, to await indefinitely the owner's pleasure or the rise of markets, or to undergo a partial process of manufacture, or for any other cause having no relation to the preparation for, or facilities or exigencies of, transportation, it will be held to have acquired a situs, making it subject to taxation here. *Standard Oil Co. v. Combs*, 96 Ind. 179; *Board v. Standard Oil Co.*, 103 Ind. 302; *Powell v. Madison*, 21 Ind. 335; *Culbertson v. Board*, 52 Ind. 361.

4. *Credits—Debts.*—It is the credit, not the debt, to which value attaches and which is taxable, and it makes no difference, for the purposes of taxation, where the debtor lives or where the debt was contracted, provided, only, that the note or other evidence of the amount due the creditor is itself, within the jurisdiction of the State. *Buck v. Halter*, 147 Ind. 580; 45 N. E. Rep. 647; 47 N. E. Rep. 8; 37 L. R. A. 384; 62 Am. St. Rep. 430.

5. *Certificates of Sale.*—Certificates representing moneys invested in purchases at sales are property, and are taxable under the tax laws of this State, as is, also, a sheriff's certificate of sale. *State v. Halter*, 149 Ind. 292; 47 N. E. Rep. 665; *Miller v. Vollmer*, 153 Ind. 26; 53 N. E. Rep. 949.

6. *Money—Stocks—Choses in Action.*—It is within the legislative power to make money, stocks and choses in action outside of this State, and belonging to residents of this State, taxable in this State. *Boyer v. Jones*, 14 Ind. 352; *Powell v. Madison*, 22 Ind. 335.

7. *Notes Temporarily in State for Collection.*—Where notes or other choses in action are in this State temporarily, or in the hands of an attorney for collection, and the credits thereof are owned and held in another State by a non-resident of this State, the notes or bonds so owned and held can not be taxed here, although secured by liens on property in this State. *Buck v. Miller*, 147 Ind. 586; 45 N. E. Rep. 647; 47 N. E. Rep. 8; 37 L. R. A. 384; 62 Am. St. Rep. 430; *Buck v. Beach*, 164 Ind. 37; 71 N. E. Rep. 903.

8. *Loans in this State by Non-Resident.*—Where a business of buying and selling property, making loans and investments, and collecting and relending the money is conducted, and the notes and mortgages so used are retained in this State, they will be subject to taxation in this State, although the owner thereof may have his residence in another State, whether such business be conducted by him in person or by an agent. *Buck v. Miller*, 147 Ind. 586; 45 N. E. Rep. 647; 47 N. E. Rep. 8; 37 L. R. A. 384; 62 Am. St. Rep. 430; *Buck v. Beach*, 164 Ind. 37; 71 N. E. Rep. 903.

9. *Claims of Non-Residents Secured by Mortgage in this State.*—Evidence of debts held by non-residents of this State against a resident of this State and secured by a mortgage on lands in this State, are not within the jurisdiction of this State and are not taxable here. *Senour v. Ruth*, 140 Ind. 818; 49 N. E. Rep. 946; *Buck v. Miller*, 147 Ind. 586; 45 N. E. Rep. 647; 47 N. E. Rep. 8; 37 L. R. A. 384; 62 Am. St. Rep. 430; *Buck v. Beach*, 164 Ind. 37; 71 N. E. Rep. 903.

10. *Property in Transit.*—Where property is collected from one or more points, by any means of transportation, and is awaiting the necessary preparations and facilities for further transportation, it will be deemed to be in transit while so detained, and not liable to taxation. *Board v. Standard Oil Co.*, 103 Ind. 302.

11. *Non-Resident Slaughtering Hogs in this State.*—Where a person is engaged in the provision trade in another State, where he has his domicile, purchases, slaughters and packs hogs in this State, for shipment to the place of his domicile, to be sold in the usual course of his business there, such property is subject to taxation in this State. *Niemen v. Shepard*, 27 Ind. 288; *Powell v. Madison*, 22 Ind. 335.

12. *Funds in Hands of Receiver.*—Funds of a non-resident corporation in the hands of a receiver in this State are taxable in this State. *Schmidt v. Failey*, 148 Ind. 150; 47 N. E. Rep. 320; 37 L. R. A. 442.

13. *Stock of Foreign Corporations.*—The capital stock of a foreign telegraph or railroad company owning and operating a line of telegraph or road in this State can not be assessed in this State as against the corporation itself. *Riley v. Western U. Tel. Co.*, 47 Ind. 511; but stock of a foreign corporation owned by a citizen of this State may be taxed against him in the township where he resides. *Seward v. Rising Sun*, 70 Ind. 351.

14. *Legislature Selects Property for Taxation.*—The Legislature must select the property to be taxed, but a selection by general classification is sufficient; it is not necessary for the Legislature to specifically select each article, credit, or kind of property to indicate the Legislature's intention to tax it, or to warrant its assessment for taxation. *Hann v. Woodward*, 151 Ind. 132; 50 N. E. Rep. 33; *Gallup v. Schmidt*, 154 Ind. 196; 56 N. E. Rep. 443.

15. *Property Outside of State.*—Property situated outside this State can not be taxed. *Senour v. Ruth*, 140 Ind. 819; 49 N. E. Rep. 946; *Foresman v. Byrns*, 68 Ind. 247; *Herron v. Keeran*, 59 Ind. 472; *Cromwell v. Connersville*, 15 Ind. 150; *Evansville v. Hall*, 14 Ind. 27.

16. *Credits in Favor of Non-Resident.*—Credits in favor of a non-resident, which are debts against citizens of this State, such credits resulting from loans evidenced by promissory notes held by such non-resident in another State, and secured by mortgages on real estate in this State, are not within the juris-

diction of this State, nor subject to taxation here. *Senour v. Ruth*, 140 Ind. 819; 49 N. E. Rep. 946; *Foresman v. Byrns*, 68 Ind. 247. See also *Stephens v. Smith*, 30 Ind. App. 120; 65 N. E. Rep. 546.

17. *Tax Certificates.*—Tax certificates are taxable. *State v. Halter*, 149 Ind. 292; 47 N. E. Rep. 606; *Miller v. Vollmer*, 153 Ind. 26; 63 N. E. Rep. 949.

18. *Traveler.*—Promissory notes belonging to and in the possession of a resident of another State who is travelling through or temporarily sojourning in this State are not liable to taxation here. *Herron v. Keeran*, 59 Ind. 472.

19. *Property Outside of State—Inter-State Commerce.*—"A State can not tax the privilege of carrying on commerce among the States. Neither can it tax property outside of its jurisdiction belonging to persons domiciled elsewhere. On the other hand, it can tax property permanently within its jurisdiction although belonging to persons domiciled elsewhere engaged in commerce among the States. And when that property is part of a system, and has its actual value only in connection with other parts of the system, that fact may be considered by the State in taxing, even though the other parts of the system are outside of the State. The sleepers and rails of a railroad, or the posts and wires of a telegraph company, are worth more than the prepared wood and the bars of steel or coils of wire, for their organic connection with other rails or wires and the rest of the operations of a working whole. This being clear, it is held reasonable and constitutional to get at the worth of such a line in the absence of anything more special, by a mileage proportion. The tax is a tax on property, not on the privilege of doing business, but it is intended to reach the intangible value of what we have called the organic relation of the property in the State to the whole system." *Fargo v. Hart*, 193 U. S. 490.

20. *Good Will.*—No method is provided by law for the taxation of the good will of a newspaper, since good will is an incident of the business of a going concern, and the tax law requires that the various items constituting a newspaper plant must be assessed separately. *Hart v. Smith*, 159 Ind. 182; 64 N. E. Rep. 661.

21. *Mortgage Taken in Name of Non-Resident, Validity.*—A mortgage executed in proper form and duly recorded is not void on the ground of public policy because taken in the name of a non-resident by whom it is assigned to the real owner, and assignment withheld from record, in order to avoid the payment of taxes. *Callicott v. Allen*, 31 Ind. App. 501; 67 N. E. Rep. 196.

22. *Advancement—Money Advanced not Taxable.*—A advanced to his two sons, twenty-five years ago, \$500 each, and decided that upon the division of his estate they be charged with the money and six per cent. interest as advancements. The estate is in the hands of the widow during her life, and the division is to take place at her death.

I do not think this advancement is to be assessed and taxed. If the money is now in the hands of the sons it is taxable as so much money. Suppose it is spent or lost, it would not be subject to taxation. If it has been invested in property the property is taxable. But I find nothing that contemplates an advancement to be listed and taxed. The subject matter of it—whether money, property, or what not—is taxable. If this were not so, an advancement might have to pay tax levy after the subject matter of it had disappeared. *Baldwin*, 1882, p. 73.

23. *Mortgage Notes—Taxable When Surrendered.*—Mortgage notes on land in Indiana, held on the first day of March are subject to taxation, regardless of the fact that the mortgaged property was subsequently surrendered in payment of the notes. *Smith*, 1892, p. 150.

24. *Mortgages Held by Non-Residents.*—Loans made by residents of the State and afterwards sold to persons not residing within the State, are not subject to taxation in this State. Substantially, this question was presented to the Supreme Court of the United States in the case of the State of Oregon held bonds. (15 Wall. 300). Wherein it was held that the power of a State is limited to persons, property and business within her jurisdiction. *Ketchum*, 1896, p. 25.

25. *Mortgages—Demand, Not Mortgage, Taxable*.—Demands secured by a mortgage, are taxable at the appraised value. You can not tax a mortgage, but can the demand, or amount secured. The amount secured by the mortgage, is usually money loaned, within the meaning of number two, of the schedule for taxation.

Demands for purchase money come under this clause. Baldwin, 1882, p. 72.

26. *Property Belonging to Another State*.—Where another State owns land within the limits of Indiana, it acquires its estate subject to all the incidents of ownership, and is subject to taxation. Hord, 1883, p. 34.

27. *Death Claim Against Secret Fraternal Order*.—A claim by reason of the death of a beneficiary in a secret fraternal order is taxable to the person entitled to receive it. Taylor, 1902, p. 119.

28. *Situs of Personal Property*. The situs of tangible personal property, for the purpose of taxation, does not follow the domicile of the owner. City of New Albany v. Meekin, 3 Ind. 481; Eversole v. Cook, 92 Ind. 222.

29. *Steamboat on Ohio River*.—The portion of a steamboat owned by a part owner which runs on the Ohio and Mississippi rivers, and occasionally touches at a point in Indiana in the course of her voyages, is not liable to be taxed in the port she touches merely from the fact that such part owner is a citizen of such port. City of New Albany v. Meekin, 3 Ind. 481.

30. *Notes Owed in Another State Temporarily in This State*.—Where a resident of New York was the owner of notes, secured by mortgage in Ohio, left them with his agent in Ohio, and this agent sent them to an agent of the owner residing in Indiana for safe keeping, who each year returned them to the Ohio agent for the necessary interest indorsement, and upon their maturity, and also returned them a few days before the date of which personal property is assessed for taxation, such notes being unindorsed when in the hands of the Indiana agent, it was held that they could not be taxed in Indiana. Buck v. Beach, 27 U. S. Sup. Ct. Rep. 712, reversing same case as reported in 164 Ind. 37; 71 N. E. 963.

[1895, p. 21. Approved and in force February 23, 1895.]

4. Realty and Personalty Defined—Lands Sold by State—Lands Reserved—

4. For the purpose of taxation real property shall include all lands within the State and all buildings and fixtures thereon and appurtenances thereto excepting in cases otherwise expressly provided by law; personal property shall include all goods and chattels within the State, all ships, boats and vessels belonging to inhabitants of this State whether at home or abroad, and their appurtenances; all goods, chattels and effects belonging to inhabitants of this State situate without this State, except the property actually and permanently invested in business in another State shall not be included; all indebtedness due to inhabitants of this State above the amounts respectively owed by them whether such indebtedness is due from individuals or corporations, public or private, and whether such debtors reside within or without the State; all shares in corporations organized under the laws of this State when the property of such corporations is not exempt or is not taxable to the corporation itself; all shares in banks organized in this State under any law of the United States, but in estimating the value of such shares deductions shall be made of the value of all real estate taxed to the bank; all shares in foreign corporations

except National Banks, owned by inhabitants of the State; all moneys; all circulating notes of National Banking Associations and United States legal tender notes and other notes and certificates of the United States payable on demand and circulating or intended to circulate as currency; all annuities and royalties; all interests owned by individuals in lands, the fee of which is in this State or in the United States, except as hereinafter provided. Property exempted from taxation by the laws of the United States shall not be included. Shares in corporations, all the property of which is taxable to the corporation itself, shall not be assessed to the shareholder. Lands sold by the State, including lands forfeited to the sinking fund, the university fund and all other trust funds, though not granted or conveyed, shall be assessed in the same manner as if actually conveyed. All lands reserved to or for any individual by any treaty between the United States and any Indian tribe or nation shall be liable to taxation from the time such treaty shall have been confirmed. (3 Burns R. S. 1901, §8411.)

1. *Good Will*.—The good will of a newspaper is not included in the enumeration of taxable property in the above section. Hart v. Smith, 159 Ind. 182; 64 N. E. Rep. 601.

2. *Life Insurance Policy*.—The above section does not cover life insurance policies. State Board v. Holliday, 150 Ind. 216; 49 N. E. Rep. 14; 42 L. R. A. 826.

3. *Newly Formed Corporation*.—The stock of a corporation organized after March first can not be taxed nor listed for taxation for the year of its formation. King v. City of Madison, 17 Ind. 48.

4. *Indebtedness*.—Under the phrase "personal property" is included indebtedness due a property owner. McCrory v. O'Keefe, 162 Ind. 534; 70 N. E. Rep. 812.

5. *Real Estate of Bank*.—Real estate belonging to a bank should not be included in the valuation of the capital stock, but should be taxed to the bank in the township where located. Board v. First National Bank, 25 Ind. App. 94; 57 N. E. Rep. 728.

6. *Foreign Corporations—Shares of Stock Personal Property*.—Under the above section all shares of foreign corporations, except national banks, owned by inhabitants of this State, are subject to taxation as personal property. Smith, 1892, p. 49.

7. *Permanently Invested Beyond the State*.—Monies permanently invested in property in another State by a citizen of this State, which property is there taxable, can not be taxed in this State; but money loaned on property in another State can and should be taxed in this State in the county where the owner resides. Buck v. Beach, 164 Ind. 37; 71 N. E. Rep. 963.

ARTICLE 2—WHAT EXEMPT.

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| 5. Public, Educational and Religious Property. | 11. Cemeteries. |
| 6. Exemption. | 12. State and Municipal Bonds. |
| 7. Property Destroyed—Rebate. | 13. Young Men's Christian Associations' Property. |
| 8. Indian Lands. | 14. Legacy. |
| 9. Suit to Cancel Assessments. | 15. Greek Letter Fraternities. |
| 10. Lands of Agricultural Associations. | 16. Fraternal Associations. |
| | 17. Free Dispensary. |

[1893, p. 12. Approved and in force January 31, 1903.]

5. Public, Educational and Religious Property—

5. The following property shall be exempt from taxation:

First. The property of the United States and of this State.

Second. The property of any county, city, town or township.

Third. All lands granted for the use of the common schools, so long as the same shall remain unsold.

Fourth. The personal property and real estate of every manual labor school or college incorporated within this State when used or occupied for the purpose for which it was incorporated, such real estate not to exceed three hundred and twenty acres.

Fifth. Every building used and set apart for educational, literary, scientific or charitable purposes by any institution or by any individual or individuals, association or incorporation, or used for the same purpose by any town, township, city or county, and the tract of land on which such building is situate; also the lands purchased with the *bona fide* intention of erecting buildings for such use thereon, not exceeding forty acres; also the personal property, endowment funds, and interest thereon, belonging to any institution, town, township, city, or county and connected with, used or set apart for any of the purposes aforesaid.

Sixth. Every building used for religious worship, and the pews and furniture within the same, and also the parsonage belonging thereto and occupied as such, and the land whereon said building or buildings are situate, not exceeding ten acres, when owned by a church or religious society, or in trust for its use, also every cemetery. (3 Burns R. S. 1901, §8412.)

a. Fraternal Beneficiary Associations, see §16.

1. *Property of United States.*—Section 2 of an act approved March 9, 1901, (Acts 1901, p. 344) concerning the ceding of jurisdiction of the State over certain lands owned and to be owned and held by the United States is as follows: "The lands aforesaid, when so acquired, shall forever be exempt from all taxes so long as the same shall remain the property of the United States." The lands referred to in this Section 2 are lands owned by the United States for post offices, custom houses, depot, light houses and fort sites.

2. *Policy of Law.*—It is the policy of the State to subject all private property to taxation, and statutes exempting property from taxation are strictly construed. *Indianapolis v. Grand Master*, 25 Ind. 518; *Trustees v. Ellis*, 38 Ind. 3; *Oak Hill Cemetery v. Wells*, 38 Ind. App. 479; 78 N. E. Rep. 350.

3. *Charitable Use of Rents.*—The application of the rents of property to charitable uses will not entitle the rented property to be exempt from taxation. *Indianapolis v. Grand Master*, 25 Ind. 518.

4. *Private School.*—Property devoted to the use of a private school is exempt from taxation. *Indianapolis v. Sturdevant*, 24 Ind. 391; *Common School v. McLean*, 8 Ind. 328; but lands of a private owner leased and occupied for school purposes are not exempt from taxation. *Travelers' Ins. Co. v. Kent*, 151 Ind. 349; 50 N. E. Rep. 552; 51 N. E. Rep. 723.

5. *Indians' Lands.*—Lands reserved by treaty to individual Indians are subject to taxation. *State v. Board*, 63 Ind. 497.

6. *State's Lands.*—When lands are purchased by the State under sales to enforce liens, such lands are not subject to taxation while the title is in the State. *Groom v. State*, 24 Ind. 255; *Henderson v. State*, 53 Ind. 60.

7. *Power of Legislature.*—The Legislature can not exempt any property from taxation except when it comes within one of the classes mentioned in the Constitution. *State v. Indianapolis*, 69 Ind. 375; 35 Am. Rep. 223; *Warner v. Curran*, 75 Ind. 309; *State v. Workingman's, etc., Co.*, 152 Ind. 278; 53 N. E. Rep. 168; *Oak Hill Cemetery v. Wells*, 38 Ind. App. 479; 78 N. E. Rep. 350.

8. *U. S. Bonds.*—Bonds and other evidences of indebtedness issued by the United States are not subject to State taxation. *Whitney v. Madison*, 23 Ind. 331; *Wright v. Stitz*, 27 Ind. 338; *Board v. Elston*, 32 Ind. 27; 2 Am. Rep. 327; *Ogden v. Walker*, 50 Ind. 490.

9. *Policy of Life Insurance.*—Paid up non-forfeitable and partly paid up life insurance policies are not subject to taxation, as there is no statute providing any regulation for, or any manner of, assessing or valuing such policies. *State Board of Tax Commissioners v. Holiday*, 150 Ind. 216; 49 N. E. Rep. 14; 42 L. R. A. 826.

10. *Property Exempt.*—By Section 5 of the tax law the Legislature has made provision for all the exemption authorized by the Constitution, namely, of property used "for municipal, educational, literary, scientific, or charitable purposes." By thus expressly naming the particular property to be exempted, the General Assembly has, by necessary implication, forbidden the exemptions of any other property from taxation. *State Board of Tax Commissioners v. Holiday*, 150 Ind. 242; 49 N. E. Rep. 14; 42 L. R. A. 826; *Oak Hill Cemetery v. Wells*, 38 Ind. App. 479; 78 N. E. Rep. 350.

11. *Lands Leased for School Purposes.*—The lands of a private owner leased and occupied for school purposes are not exempt from taxation.

The exemption from taxation of property used for school purposes, was to encourage those who should devote themselves and their property to educational purposes * * * But this will not apply in favor of a property owner who simply rents or leases his property, to be used for one of the purposes mentioned in the Constitution. He holds such property for his own use and benefit—for his individual profit and not for the public good. *Travelers' Insurance Co. v. Kent*, 151 Ind. 349; 50 N. E. Rep. 552; 51 N. E. Rep. 723.

12. *Law Strictly Construed.*—Exemptions from taxation are not especially favored by the courts; on the contrary, they are to be strictly construed. *Read v. Yeager*, 104 Ind. 195; 3 N. E. Rep. 856; *Common Council v. McLean*, 8 Ind. 328; *Trustees v. Ellis*, 38 Ind. 3; *Conklin v. Cambridge*, 58 Ind. 190; *South Bend v. University*, 69 Ind. 344; *State v. Indianapolis*, 69 Ind. 375; 35 Am. Rep. 223; *Warner v. Curran*, 75 Ind. 309; *Oak Hill Cemetery v. Wells*, 38 Ind. App. 479; 78 N. E. Rep. 350.

13. *National Currency—Greenbacks—Coin.*—Formerly treasury notes or "greenbacks" were exempt from taxation. *Board v. Elston*, 32 Ind. 27; 2 Am. Rep. 327; *Ogden v. Walker*, 50 Ind. 490. But now the circulating notes of national banking associations, and United States legal tender notes and other notes and certificates of the United States payable on demand and circulating, or intended to circulate, as currency, and gold and silver or other coin are subject to taxation as money on hand or on deposit under the laws of this State or any Territory. 28 U. S. Statutes at Large 278.

14. *Unincorporated Company.*—Under the 4th clause of the above section, the fact that the establishment is or is not incorporated does not determine the question of its liability to or exemption from taxation. *Common Council v. McLean*, 8 Ind. 328.

15. *Escheated Lands.*—Taxes assessed on lands that have escheated to the State are invalid; and a sale of such lands to collect such taxes is also void. *Reid v. State*, 74 Ind. 252.

16. *Orphan Asylums.*—The fact that a home for the care and education of orphan and homeless children, maintained by contributions from the counties and townships of the State, and by private donations, is conducted on private account, and the earnings applied to the personal benefit of the individual proprietor, does not deprive the owner of the right of exemption of the property from taxation as provided by the above section. *Vink v. Work*, 158 Ind. 638; 64 N. E. Rep. 83; *City of Indianapolis v. Sturdevant*, 24 Ind. 391.

17. *Asylum Maintained by Religious Society.*—An asylum maintained by a religious denomination for members of that denomination is a charitable institution and its property exempt from taxation. *Michener*, 1888, p. 74.

18. *Temperance Organizations.*—The property of a temperance organization is exempt from taxation. *Michener*, 1888, p. 196.

19. *Churches—Land of, When Exempt.*—Land purchased for the benevolent intention of erecting buildings for church or educational purposes thereon, not exceeding forty acres, is exempt from taxation. *Smith*, 1892, p. 156.

20. *Property of Charitable Organizations.*—The statute exempts from taxation every building used and set apart for charitable purposes, and the tract of land on which such building is situate, not exceeding forty acres. Also the personal property and endowment fund and interest thereon belonging to any charitable institution used and set apart for charitable uses.

If all or any part, parcel or portion of any tract or lot of land, or any building or personal property of such charitable institution is used or occupied for any other purpose than such charity, such property, part, parcel or portion is subject to taxation.

A statute conferring exemption from taxation in general terms, does not exempt property from special assessments for local improvements.

Property leased for business purposes, or diverted to secular use for gain, is not exempt from taxation, although the rent is devoted to charitable purposes. The use, in order to come within the terms of the exemption, must be directly in aid of the charitable purpose.

A corporation for business purposes, although such purposes may incidentally contemplate benevolent results, is not a charitable institution and is not exempt. [See now §246.]

A charitable institution to be exempt from taxation must be purely charitable.

A good charitable use must be public, not in the sense that it must be executed openly in public, but in the sense of being so general and definite in its objects as to be deemed of common public benefit. *Hord*, 1886, p. 22.

21. *Lodge Property.*—Only that portion of a building owned by a lodge of Odd Fellows which is used exclusively for lodge purposes should be exempt from taxation.

22. *Lodge Property.*—The personal property used in a lodge room of Odd Fellows is exempt from taxation. *Ketcham*, 1897, p. 165.

23. *Lodges, Part of Property Exempt.*—Lodge property, used for fraternal purposes, is exempt from taxation, except that such part of the property as is used or rented for business purposes is subject to taxation. *Smith*, 1892, p. 39.

25. *Masonic Funds.*—The funds of a Masonic lodge used exclusively for lodge purposes, whether for maintaining the lodge itself or as a widows' or orphans' fund, the lodge being the means through which such funds are distributed, are exempt from taxation under clause five of the above section. [See now §16.]

26. *Forest Reservation.*—The law with reference to exemption of forests from taxation was repealed in 1905. Acts 1905, p. 64, sec. 3.

27. *Cemetery.*—An incorporated cemetery in the business of selling lots for gain is not exempt from taxation; but land that is and has been used for burial purposes is exempt from taxation. *Oak Hill Cemetery Co. v. Wells*, 38 Ind. App. 479; 78 N. E. Rep. 350.

[Acts 1891, p. 199. Approved and in force March 6, 1891.]

6. Exception—

6. If all or any part, parcel or portion of any tract or lot of land, or any buildings or personal property enumerated in the preceding section as exempt from taxation, shall be used or occupied for any other purpose or purposes than those recited in said section, by reason whereof they are exempted from taxation, such property, part, parcel or portion shall be subject to taxation so long as the same shall not be set apart or used exclusively for some one of the purposes specified in said enumeration. (3 Burns R. S. 1901, §8413.)

1. *Church Property.*—Church property devoted to secular uses for gain is subject to taxation. *Orr v. Baker*, 4 Ind. 86.

7. Property Destroyed—Rebate—

7. In all cases where buildings or personal property shall be destroyed, in whole or in part, by unavoidable casualty, after being assessed for the year, and such loss is not covered by insurance, the County Auditor shall, upon sworn proof of such loss, allow a rebate of such proportion of the taxes for that year as that part of the year which shall remain, after such destruction, bears to the whole year. (3 Burns R. S. 1901, §8414.)

[Acts 1891, p. 115. Approved and in force March 5, 1891.]

8. Indian Lands—

1. It shall be unlawful for any State, county or municipal officer to assess, place upon any tax duplicate, advertise or offer for sale or sell for purported assessments thereon, any land in Indiana included within a grant to any member of the Miami tribe of Indians made by the United States under a treaty with such tribe from lands in such treaty ceded by said tribe: Provided, The then owner of such land is not a citizen of the United States and is a descendant or member of the family of such grantee, and that such grantee was, by treaty between the United States and such tribe, permitted to remain with his family in Indiana when such tribe removed from the State, and that such owner or his ancestors, subsequent to the removal of said tribe from Indiana, was, in said State, enumerated and paid by the United States as a mem-

ber of said tribe, and that such lands have not been in the adverse possession of any person not a member of said tribe and descendant of said original grantee under a conveyance executed by such an owner. (3 Burns R. S. 1901, §8415.)

1. *Repealed*.—This and the next section are probably repealed, at least such is the intimation in Board v. Godfrey, 27 Ind. App. 610; 60 N. E. Rep. 177.

2. *Indian—Citizenship*.—An Indian born in the United States, who has never held tribal relations, and who has availed himself of all the rights of a citizen of the United States and has become a citizen of the United States within the meaning of Section 6 of the act of Congress approved February 8, 1887, is not entitled to exemption from taxation of lands held by him by virtue of the treaty with the Miami Tribe of Indians of 1838, under the provisions of the ordinance of July 13, 1787, for the government of the territory northwest of the Ohio river that such lands and property "shall never be taken from them without their consent." Board v. Godfrey, 27 Ind. App. 610; 60 N. E. Rep. 177.

3. *Sale of Lands—Reconveyance*.—If lands are exempt because owned by an Indian, yet if he sells them to a white man they become subject to taxation, even though they be subsequently reconveyed to the Indian. Revoir v. State, 137 Ind. 332; 36 N. E. Rep. 1109.

4. *Decisions*.—For other decisions relating to taxing lands of the Indians, see *Me-shing-go-me-sia v. State*, 361 Ind. 310; Board v. Simons, 129 Ind. 190; 28 N. E. Rep. 420; State v. Board, 63 Ind. 497.

9. Suit to Cancel Assessment—

2. Whenever such land so owned has been or may be assessed or placed upon any tax duplicate for taxation, any such owner or owners or their assigns may institute suit in the circuit court of the county, wherein such land is found, against the board of commissioners, auditor and treasurer of such county to relieve such land from the cloud on the title thereto created, while so owned, by such assessment or placing the same on any tax duplicate and by any purported sale thereof based thereon. And such court shall, upon complaint containing facts establishing the existence of all the conditions in section 1 of this act set forth as to character of lands therein described and ownership thereof, have jurisdiction to finally determine the rights of the State of Indiana and any public corporation therein as well as of any person properly made defendant in such suit, and render judgment accordingly in favor of plaintiff if such complaint be true: Provided, This act shall not affect any suit now pending in any court in this State. (3 Burns R. S. 1901, §8416.)

[Acts 1901, p. 20. Approved February 14, 1901. In force May 16, 1901.]

10. Lands of Agricultural Associations—

1. Any part, parcel or tract of land not exceeding eighty acres and the improvements thereon, owned by county or district agricultural associations of this State, organized agreeably to the provisions of "An act for the encouragement of agriculture," ap-

proved February 17, 1852, shall be exempt from taxation: Provided, That when the same shall cease to be used or occupied exclusively for the purposes specifically set out in said act, approved February 17, 1852, or shall fail in any way to comply with the provisions thereof, the same shall cease to be exempt from taxation. (2 Burns R. S. 1901, §2805a.)

1. *Property of State Board of Agriculture*.—The real and personal property of the State Board of Agriculture is exempt from taxation. Acts 1865, p. 55; 2 Burns R. S. 1901, Sec. 2733.

2. *Bonds and Notes*.—All mortgages, notes, bonds and evidences of indebtedness of the Indiana State Board of Agriculture issued after April 15, 1906, and secured by mortgage upon its State fair grounds in Marion county, is exempt from taxation. Acts 1905, p. 25.

[Acts 1865, p. 18. Approved and in force February 20, 1865.]

11. Cemeteries—

1. In all cases where cemeteries incorporated under the laws of this state upon such a basis that the corporation can not derive any pecuniary benefit or profit therefrom; and in all cases where a cemetery association shall provide for setting aside a certain definite portion of the proceeds derived from the sale of lots as a perpetual care fund, the income of which shall be used as a perpetual care and maintenance fund, all the property and assets belonging to such corporation used exclusively for cemetery purposes shall be exempt from taxation for any purpose: And provided, That it shall be lawful for any person to provide a fund, either by gift, bequest or devise, which may be a perpetual fund, the income from which shall be used for the care and maintenance of any cemetery lot expressly described in the instrument creating the fund, and the fund so created shall be exempt from taxation for any purpose; and a trust may be created for the care, custody and control of such fund: Provided, That the real estate of any such corporation lying within any incorporated city or town shall not be exempt from liability for street improvements and sewer assessments, as now or may hereafter be provided by law. (As amended March 4, 1905. Acts 1905, p. 185; 4 Burns Supp. §4708a.)

1. Land held by an incorporated cemetery association for gain is not exempt from taxation, where it sells the lots; but land that is and has been used for burial purposes is exempt, as the framers of the provisions of the Constitution allowing exemptions from taxation did not consider burying ground property. Oak Hill Cemetery Co. v. Wells, 38 Ind. App. 479; 78 N. E. Rep. 350.

[Acts 1903, p. 322. Approved March 9, 1903. In force April 23, 1903.]

12. State and Municipal Bonds—

1. All bonds, notes and other evidence of indebtedness hereafter issued by the State of Indiana or by municipal corporations within the State upon which the said State or the said municipal

corporations pay interest shall be exempt from taxation. (4 Burns Supp. §8417e)

[Acts 1907, p. 20. Approved and in force February 13, 1907.]

13. Young Men's and Young Women's Christian Associations—

6. Any and all real and personal property owned by any such association [Young Men's Christian Association or Young Women's Christian Association] and which is occupied or used exclusively for the purposes and objects of said association, or the proceeds of which are used exclusively for the purposes and objects of said association, shall be exempt from taxation.

[Acts 1883, p. 47. Approved and in force February 27, 1883.]

14. Legacy—

1. When any literary, scientific, benevolent, or charitable institution is the specific or residuary legatee of any devise or bequest, any money or choses in action going to or belonging to any of said institutions, shall not, while the same was in the hands of the executors, be liable to taxation, and no taxes shall be collected thereon for the year 1881, or any preceding year, but the same shall be taken and deemed to have been exempt from taxation. (3 Burns R. S. 1901, §8417.)

1. *Repealed.*—The subject matter of this section is probably covered by the fourth clause of Section 5.

[Acts 1905, p. 36. Approved February 24, 1905. In force April 15, 1905.]

15. Greek Letter Fraternities—

1. Any part, parcel or tract of land not exceeding one (1) acre, and the improvements thereon, and all personal property, owned by any Greek letter fraternity, which is connected with any college, university, or other institution of learning, and under the supervision thereof, and which is used exclusively by such Greek letter fraternity to carry out the purposes of such organizations, shall be exempt from taxation. (4 Burns Supp., §8416a.)

[1903, p. 18. Approved and in force February 9, 1903.]

16. Fraternal Beneficiary Associations—

13. The money, or other benefit, charity, relief or aid to be paid, provided or rendered by any [fraternal] association authorized to do business under this act shall not be liable to attachment by trustee, garnishee or other process, and shall not be seized, taken, appropriated or applied by any legal or equitable process or by operation of law to pay any debt or liability of a certificate holder or of any beneficiary named in any certificate or any person

who may have any right thereunder. And the buildings and other property used by said association in carrying on its business, and all dues, assessments and other payments and the accumulations thereof, held and possessed by said association for the payment of death, sick or disability benefits, and the reserve, emergency and other mortuary funds of said association shall be exempt from taxation for State, county and municipal purposes: *Provided*, That nothing in this act shall be construed to exempt from taxation any real estate owned by any association incorporated or doing business under the provisions of this act, except such as is occupied exclusively by such association in carrying on its business. (4 Burns Supp., §5050m.)

1. *NOTE.*—See Section 5, clause 5.

[Acts 1907, p. 181. Approved and in force March 8, 1907.]

17. Free Dispensary—

1. In all cases where any building has been erected or acquired by any corporation, institution or association created, organized and existing exclusively for charitable purposes, which charitable purpose shall consist in the dispensing gratis of medicines and medical advice and aid to poor persons, pursuant to the provisions of the last will of any testator, which building and the lands upon which the same may be situate were acquired by means of any devise or bequest, or by the use or application of the proceeds of any such devise or bequest, and such building shall be occupied in whole or in part in dispensing such charity and the income of such building is used exclusively for such charitable purposes, such building and the lands upon which the same may be situate shall be exempt from taxation. And where any taxes may have been heretofore levied or assessed against any such land or lands and the building and not heretofore paid, such taxes shall not hereafter be collected and such taxes so levied or assessed shall not hereafter constitute or be a lien upon any such property, nor shall the same in any manner constitute a claim against any such institution or association.

ARTICLE 3—WHEN ASSESSED.

18. Personal Property, When Listed. 20. Executors and Administrators.
19. Owner on March 1st, First
Liable.

[Acts 1891, p. 199. Approved and in force March 6, 1891.]

18. Personal Property, When Listed—

8. Personal property shall be listed for taxation between the first day of March and the fifteenth day of May, each year, and with reference to the quantity and quality held or owned on the

first day of March, in the year for which the property is required to be listed. (As amended February 25, 1903. Acts 1903, p. 49; 4 Burns Supp., §8418.)

1. *Owner Moving Into County After March 1st.*—If property be assessed for State and county purposes on the first day of March, and before May 15th the owner of it moves into a city or town, it will be liable to a city or town assessment also. *Hilgenberg v. Wilson*, 55 Ind. 210. See *Luke v. Sheridan*, 26 Ind. App. 529; 60 N. E. Rep. 359.

2. *Property Acquired After March 1st.*—Property acquired after March 1st can not be listed nor taxed for the year it is acquired to the person who then becomes the owner. *Woodward v. Jacobs*, 27 Ind. App. 188; 60 N. E. Rep. 1015.

3. *Person Moving Into County After March 1st.*—Where a person lists his property in the county where he resides in this State, and after it is listed and even before May 15th of the same year he moves into another county, such property can not be either listed or taxed for that year in the county to which he has removed. *Woodward v. Jacobs*, 27 Ind. App. 188; 60 N. E. Rep. 1015.

4. *Notes Given After March 1st for Purchase Money.*—If notes be given after March 1st in part payment of the purchase of a farm or lot, which is secured by a mortgage on such farm or lot, they can not be assessed against the payee or owner for taxes for that year, even though the contract for the sale of such farm or lot was executed before March 1st, but the deed held in escrow until the notes were executed. *Carr v. Martin*, 37 Ind. App. 656; 77 N. E. Rep. 870.

19. Owner on March 1st, First Liable—

9. The person purchasing or acquiring property, whether real or personal, on the first day of March, in any year, shall be considered as the owner on that day, and shall be assessed and liable for the taxes of that year. (As amended February 25, 1903. Acts of 1903, p. 49; 4 Burns Supp., §8419.)

1. *Holder of Legal Title.*—The holder of the legal title is the owner of property for the purpose of taxation. *Mullikin v. Reeves*, 71 Ind. 281.

2. *Owner on March 1st.*—The person who owned the property on the first day of March is to be assessed with it, although he may, after that date and before it is listed, have sold it. *City of Richmond v. Scott*, 48 Ind. 508. See also *King v. City of Madison*, 17 Ind. 48; *Lose v. State*, 72 Ind. 285; *Carr v. Martin*, 37 Ind. App. 653; 77 N. E. Rep. 870.

3. *Contract can not Relieve from Tax Liability.*—No contract by which a liability is created after March 1st can rotate back so as to make its creditor liable to be taxed for that year for such demand. *Lamb v. Rawles*, 33 Ind. 386.

4. *Corporation Organized After March 1st.*—Where a corporation is organized after March 1st, its stock can not be taxed for that year, either as omitted property or otherwise. *King v. City of Madison*, 17 Ind. 48.

20. Executors and Administrators—

10. If a person die after the first day of March, in any year, without having given in the amount of his taxables, his executor or administrator, heir at law, or other person having charge thereof, shall give in the same as though such property had been in his possession on the first day of March of such year. (As amended February 25, 1903. Acts 1903, p. 49; 4 Burns Supp., §8420.)

1. *Administrator.*—An administrator must list the property of his decedent that is in his (such administrator's) hands on March 1st. *Cullop v. City of Vincennes*, 34 Ind. App. 667; 72 N. E. Rep. 166.

ARTICLE 4—WHERE ASSESSED.

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| 21. Personalty, Where Assessed. | 27. Gas, Water and Hydraulic Companies. |
| 22. Corporate Property. | 28. Road and Bridge Companies. |
| 23. Partnership Property. | 29. Principal and Agent. |
| 24. Property in Transit. | 30. Person Removing—Doubts. |
| 25. Water Craft. | 31. Realty, When and to Whom Assessed. |
| 26. Banks—Brokers—Stock Jobbers, etc. | |

[Acts 1891, p. 199. Approved and in force March 6, 1891.]

21. Personalty, Where Assessed—

11. All personal property shall be assessed to the owner in the township, town or city of which he is an inhabitant on the first day of March of the year for which the assessment is made, with the following exceptions:

First. All goods and chattels situated in some township, town or city other than where the owner resides shall be assessed in the township, town or city where situated, and not elsewhere, if the owner or person having control thereof hires or occupies a store, mill, dock yard, piling ground, place for sale of property, shop, office, mine, farm, place of storage, manufactory or warehouse therein, for use in connection with such goods and chattels: Provided, That the procuring any such property to be manufactured upon contract shall be deemed the hiring of the mill or manufactory, within the meaning of this section.

Second. All animals kept throughout the year in some township, town or city, other than where the owner resides, shall be assessed to such owner, or to the person in possession of the township, town or city where kept.

Third. All shares in banks shall be assessed to their owners in the city or town where the bank is located.

Fourth. Personal property of non-residents of the State shall be assessed to the owner or to the person having control thereof in the township, town or city where the same may be, except that where such property is in transit to some place within the State it shall be assessed in such place.

Fifth. The personal property of minors under guardian shall be assessed to the guardian in the township, town or city where the guardian resides, but shall not be assessed or taxed for city or town purposes unless the ward resides in such city or town, and the personal property of every other person under guardianship shall be assessed to the guardian in the township, town or city where the ward resides.

Sixth. The personal property of the estates of deceased persons in the hands of executors, administrators or other persons shall be assessed to the persons in charge of such property in the township, town or city where the deceased last dwelt, until such

property has been distributed to the heirs or other persons entitled thereto. If such decedent was a non-resident of the State, such property shall be assessed in the township, town or city where situated.

Seventh. Personal property under the control of a trustee or agent, whether a corporation or natural person, may be assessed to such trustee or agent except as otherwise by law provided in the township, town or city in which such trustee or agent resides.

Eighth. All personal property of any person situate upon, also all buildings situate and being upon the land of the United States, or of this State, or upon the lands of any county, township, town or city, shall be deemed personal property for purposes of taxation and assessment, and shall be assessed as personal property to the owner or occupant thereof in the township, town or city to which said lands belong or of which they form a part, and such buildings shall be subject to sale for taxes in the same manner as herein provided for personal property: Provided, however, It shall not be necessary to remove such buildings for the purpose of sale.

Ninth. Personal property of non-residents of the State in the possession or under control of any person or corporation as trustee, receiver, executor, administrator or guardian shall be assessed for State and county purposes only and in the county where the court is situated by which said trustee, receiver, executor, administrator or guardian was appointed or to which such trustee, receiver, executor, administrator or guardian reports.

Tenth. Personal property in the possession of any person or corporation as trustee, receiver, executor, administrator or guardian shall be assessed for State and county purposes in the county where the court is situated by which said trustee, receiver, executor, administrator or guardian was appointed, or to which such trustee, receiver, executor, administrator or guardian reports. (As amended February 25, 1903. Acts 1903, p. 49; 4 Burns Supp., §8421.)

1. *Shares of Stock*.—Shares of stock in an incorporated company are deemed situate at the domicile of the owner for the purpose of taxation. *Evansville v. Hall*, 14 Ind. 27; *Conwell v. President*, etc., 15 Ind. 150; *Madison v. Whitney*, 21 Ind. 261. But shares of stock or certificates in an unincorporated bank are assessed in the township where the bank is located. Section 70.

2. *Debts Due Resident*.—Debts due to a resident of this State are taxable to him at the place of such residence. *Foreman v. Byrns*, 68 Ind. 247; *Buck v. Miller*, 147 Ind. 586; 45 N. E. Rep. 647; 47 N. E. Rep. 8; 37 L. R. A. 384; 62 Am. St. Rep. 436.

3. *Assessed Where Owner Resides*.—Personal property in general is assessed where its owner resides, but the situs of such property, for the purpose of taxation, does not always or necessarily follow the domicile of the owner. *Eversole v. Cook*, 92 Ind. 222; *Buck v. Miller*, 147 Ind. 586; 45 N. E. Rep. 647; 47 N. E. Rep. 8; 37 L. R. A. 384; 62 Am. St. Rep. 436.

4. *Test as to Where to Assess*.—The test as to where the right to tax property exists is its place of location and use, the place where, if a security or obligation, it is a credit, not where it is a debit. *Buck v. Miller*, 147 Ind. 586; 45 N. E. Rep. 647; 47 N. E. Rep. 8; 37 L. R. A. 384; 62 Am. St. Rep. 436.

5. *Residence on March 1st*.—All residents of a township on the first day of March, or at any time between that and the fifteenth day of May, the time when the Assessor is required to complete his assessment, are taxable in such township for their money and credits, owned on the first day of March, except where such persons became residents of such township after the first day of March and were assessed for such money and credits in the township from which they moved. *State v. Reynolds*, 108 Ind. 353; 9 N. E. Rep. 287.

6. *Taxable Where Located*.—Property that has substantial and corporeal form must have an actual location, and is taxable at such location. *Powell v. Madison*, 21 Ind. 355; *Touney v. Bell*, 23 Ind. 422; *Stephen v. Smith*, 30 Ind. App. 120; 65 N. E. Rep. 546.

7. *Taxing Extra Territorial Property*.—Where a person resides in a town in this State, and his personal property belongs elsewhere, such town has no authority to assess taxes upon such property, and the collection of the same will be enjoined. *Eversole v. Cook*, 92 Ind. 222.

8. *Non-resident Owner*.—The personal property of non-residents situate in this State is taxable at the place of its location. *Standard Oil Co. v. Combs*, 96 Ind. 179; *Board v. Standard Oil Co.*, 103 Ind. 302; *Buck v. Beach*, 164 Ind. 37; 72 N. E. Rep. 963.

9. *Funds in Receiver's Hands*.—The funds of an insolvent mutual benefit assessment society in the hands of a receiver in this State are subject to taxation in the county where they are kept on deposit by such receiver, although the funds had been collected in other States in which the society also did business, and turned over to the Indiana receiver by order of their respective courts, and were to be distributed to claimants, many of whom were non-residents. *Schmidt v. Failey*, 148 Ind. 150; 47 N. E. Rep. 326; 37 L. R. A. 442.

10. *Liens on Trust Funds*.—Taxes are not only a lien upon trust funds in court, but they are the most and paramount lien, to be paid before any other claim whatsoever, except it be the costs of court. *Schmidt v. Failey*, 148 Ind. 150; 47 N. E. Rep. 326; 37 L. R. A. 442.

11. *Claims Due Non-residents*.—Claims due non-residents of the State, such as mortgage on property situate in this State, can not be listed for taxation. *Senour v. Ruth*, 140 Ind. 318; 39 N. E. Rep. 946. See also *Stephens v. Smith*, 30 Ind. App. 120; 65 N. E. Rep. 546.

12. *Agent*.—It is the duty of an agent to list for taxation the property of his principal in his custody, and in the event of his failure to do so, the property may properly be assessed to him. *Rieman v. Shepard*, 27 Ind. 288.

13. *Removal from County—Injunction—Double Taxation—Board of Review*.—Where a property owner removed from the county in February and listed her personal property for taxation in the county to which she removed, and paid the taxes thereon to the treasurer of that county the treasurer of the county from which she removed was enjoined from collecting taxes on such personal property for said year assessed without the owner's knowledge, and the owner was not required to appear before the board of review to have the error corrected. *Lake v. Sheridan*, 26 Ind. App. 529; 60 N. E. Rep. 359.

14. *Assessing in Wrong Township*.—If notes and claims be listed without his consent in a township of which the owner is not an inhabitant, the assessment is void and the County Auditor may be enjoined from putting it on the tax duplicate. *Stephens v. Smith*, 30 Ind. App. 120; 65 N. E. Rep. 546.

15. *Notes and Mortgages not Chattels*.—Notes and mortgages are not goods and chattels within the meaning of the above section, and must be valued in the township where the owner is an inhabitant. *Stephens v. Smith*, 70 Ind. App. 120; 65 N. E. Rep. 546.

16. *Notes and Mortgages Given for Purchase-Money at Commissioner's Sales*.—Notes and mortgages held by commissioners appointed by the Circuit

Court, given for the purchase-money of property, are taxable to the commission-ers.

Notes and mortgages given for the purchase-money of property sold by commissioners appointed by the court, which have been assigned, should be taxed to the holders. Ketcham, 1897, p. 112.

17. *Non-residents—Property of—How Listed.*—The personal property of non-residents should be assessed to the owner or person having control thereof in the town or city where the same is located. Smith, 1892, p. 163.

18. *Tools of a Contractor.*—The tools and machinery of a contractor, as well as material owned by him and not in position, is assessable to him as personal property on the first day of April [now, March] in the township where it is located. Smith, 1892, p. 45.

19. *Property in Process of Manufacture.*—The situs of personal property in process of manufacture is the jurisdiction within which it is found on the first day of April [now, March]. Smith, 1894, p. 21.

20. *Township Where Taxable.*—Personal property subject to taxation in the township where the owner resides. Where he is a non-resident such property is subject to assessment in the township where it has a legal situs. Smith, 1892, p. 41.

21. *Administrators, Money in Hands Taxable.*—Money in the hands of an administrator should be assessed against him for taxation. If final report has been made and approved and the money turned in to the Clerk for distribution, it should be assessed in the name of the Clerk as trustee. Smith, 1892, p. 43.

22. *Guardians, Personal Property of and Where Assessed.*—The personal property in the possession of a person or corporation as guardian must be assessed for State and county purposes in the county where the court is situated by which the guardian was appointed or to which the guardian reports. For the purposes of local taxation, that is, township, town or city, property should be assessed in the township, town or city where the guardian and ward reside, provided they both reside in the same township, town or city.—Taylor, 1900, p. 136.

23. *Imported Goods, When Assessable.*—Where the importer has sold the imported package, or if it be broken for use or for sale by the importer, it ceases to be a part of foreign commerce, and loses its character as an import and is no longer exempt from taxation. Hord, 1896, p. 15.

24. *Temporarily Moving Out of State.*—The fact that a money lender has temporarily moved into another State and there loaned money does not enable him to exemption thereon from taxation in this State, even though in such State he be taxed on such money. Buck v. Beach, 164 Ind. 37; 72 N. E. Rep. 963.

22. Corporate Property—

12. All corporate property, including capital stock and franchises, except where some other provision is made by law, shall be assessed to the corporation as to a natural person in the name of the corporation. The place where its principal office in this State is situated shall be deemed its residence, but if there be no principal office in the State then such property shall be listed and taxed at any place in the State where the corporation transacts business. (3 Burns R. S. 1901, §8422.)

1. *Application of Assessment.*—The above section applies to the assessment only of corporate property, and that "where some other provision is 'not' made by law." It would, therefore, not relate to assessments against individuals. Harn v. Woodard, 151 Ind. 136; 50 N. E. Rep. 33.

2. *Taxing Tangible Property of Corporation.*—If the tangible property of a corporation represents the entire capital thereof, and such property is returned for taxation, the capital stock is not taxable, unless the value of the capital

stock exceeds the value of such property, in which case the stock is taxable for such excess. Hyland v. Brazil, etc., Co., 128 Ind. 335; 20 N. E. Rep. 672; Hyland v. Central, etc., Co., 129 Ind. 68; 28 N. E. Rep. 308; 13 L. R. A. 515.

3. *Shares as Personal Property.*—Shares of stock in a corporation are regarded as personal property for the purpose of taxation. Seward v. Hising Sun, 70 Ind. 351.

4. *When Bank Stock Taxed to Individual.*—When not otherwise provided by law, the capital stock of corporations is taxed to the individual owners thereof. Whitney v. Madison, 23 Ind. 331, in the township in which they live. City of Evansville v. Hall, 14 Ind. 27.

5. *Constitutional.*—The requirement of this section that the capital stock shall be taxed at the place where the principal office of the corporation is situated is not invalid where the owner of the stock lives in another county or State. Whitney v. Ragsdale, 33 Ind. 107.

6. *All Property of a Corporation.*—The scheme of taxation provided by our statutes contemplate the amount for taxation of all the property of a corporation. Parkinson v. Jasper County Tel. Co., 31 Ind. App. 135; 67 N. E. Rep. 471.

9. *What Property Assessable.*—Under the above section all corporate property including stock and franchises, except where some other provision is made by law, is assessed to the corporation itself. Such assessment must be made against the corporation and not the stockholders. This covers all corporations except banks, building associations and railroads. Sections 18 and 92 cover the general subject of assessment of corporations. It is the duty of the officers of the corporation to pay the taxes on corporate property. Taylor, 1900, p. 127.

23. Partnership Property—

13. For the purposes of assessing property and collecting taxes, a co-partnership shall be treated as an individual, and whenever the name of the owner or occupant of property is required to be entered upon the tax duplicate, if such property is owned or occupied by a co-partnership, the firm name may be used. A co-partnership shall be deemed to reside in the township, town or city where its business is principally carried on. Each partner shall be liable for the whole tax. (3 Burns R. S. 1901, § 8423.)

1. *Back Taxes.*—A partner is, as between himself and the State, liable for back taxes which the partnership omitted to list and return for taxation in previous years. Parkinson v. Thompson, 164 Ind. 609; 73 N. E. Rep. 109.

24. Property in Transitu—

14. Personal property in transitu shall be listed and assessed in the township, town or city where the owner resides: Provided, That if such property is intended for a particular business, it shall be listed and assessed at the place where the property of such business is required to be listed and assessed. (3 Burns R. S. 1901, §8424.)

1. *Property Awaiting Shipment.*—Personal property of a non-resident in this State, and awaiting shipment outside of the State, is not subject to taxation. Standard Oil Co. v. Bachelor, 80 Ind. 1; Herron v. Keeran, 50 Ind. 472; 26 Am. Rep. 87.

2. *When in Transitu.*—Property collected from different points and awaiting facilities for further transportation is deemed in transitu. Board v. Standard Oil Co., 103 Ind. 302; Standard Oil Co. v. Combs, 96 Ind. 179.

3. *When not in Transitu.*—Where property of a non-resident is left in this State by direction of the owner for any purpose for an indefinite time before shipment, such property is not deemed in transitu and is liable to taxation where located. *Standard Oil Co. v. Combs*, 96 Ind. 179; *Board v. Standard Oil Co.*, 93 Ind. 802.

15. Water Craft—

15. All persons, companies and corporations in this State owning or controlling steamboats, sailing vessels, wharf-boats, barges and other water craft, shall be required to list the same for assessment and taxation in the county, township, town or city in which the same may belong, or be enrolled, licensed or registered, or kept when not enrolled, licensed or registered. (3 Burns R. S. 1901, §8425.)

1. *Former Statute.*—Since the following decisions were rendered the statute has been changed, as above set out, so that these cases can not be regarded as authorities. *Eversole v. Cook*, 92 Ind. 22; *Cook v. Port Fulton*, 106 Ind. 170; 6 N. E. Rep. 321.

2. *Tax on Tonnage.*—See Secs. 228 to 234.

16. Bankers—Brokers—Stock Jobbers, Etc.—

16. The personal property of banks or bankers, corporate or unincorporated, brokers, stock jobbers, insurance companies, hotels, livery stables, saloons, eating houses, ferries and mining companies, and all companies except companies specially provided for in this act, shall be listed and assessed in the township, town or city where such personal property is situated. (3 Burns R. S. 1901, §8426.)

17. Gas, Water and Hydraulic Companies—

17. The personal property of gas and coke companies, natural gas companies, electric light companies, water works companies, and hydraulic companies shall be listed and assessed in the township, town or city where the principal works are located; the mains, pipes and wires of such companies laid in or along roads, streets or alleys shall be listed as personal property in the township, city or town where the same are laid or placed. (3 Burns R. S. 1901, §8427.)

18. Road and Bridge Companies—

18. The personal property of street railroad, plank road, gravel road, turnpike or bridge companies shall be listed and assessed in the township, city or town where the principal place of business is located. The track, road or bridge of such company shall be held to be personal property, and shall be listed and assessed in the township, town or city where the same is located or laid. (3 Burns R. S. 1901, §8428.)

29. Principal and Agent—

19. Persons required to list property on behalf of others shall list it separately from their own, specifying in such case the name of the person, estate, company or corporation to whom it belongs. (3 Burns R. S. 1901, §8429.)

1. *Agent Must List.*—It is the duty of an agent to list for taxation the property of his principal in his custody, and in the event of his failure to do so, the property may properly be assessed to him. *Rieman v. Shepard*, 27 Ind. 228; *Buck v. Beach*, 164 Ind. —; 71 N. E. Rep. 963.

30. Persons Removing—Doubts—

20. The personal property of persons removing from one county, township, town or city to another, between the first day of March and the fifteenth day of May, in any year, shall be listed and assessed in either place in which the owner is first called upon by the Assessor. The owner of personal property moving into this State from another State, between the first day of March and the fifteenth day of May, in any year, shall be listed for his poll and the property owned by him on the first day of March of such year, in the county, township, town or city into which he has so removed: Provided, That if such person has been assessed and shall make it appear to the Assessor by the certificate of the proper authority in the place of his former residence, that he is held for tax for the current year in such former place of residence, he shall not again be assessed for such year. In case of doubt as to the proper place to assess personal property, if the doubt arises as to different townships in the county the Auditor shall determine the place; and if the doubt arises as to different counties, the Auditor of State shall determine; such determination shall be summary and final. (As amended February 25, 1903. Acts 1903, p. 49; 4 Burns Supp. §8430.)

1. *Moving into City After March 1st.*—If a person is assessed outside of a city on March 1st, and moves into the city with the property assessed before May 15th, he will be liable to an assessment for city taxes. *Hilgenberg v. Wilson*, 55 Ind. 210.

2. *Moving from One Township to Another.*—A person moving from one township to another between March 1st and May 15th, is assessed in the township where he is first called upon by the assessor. *State v. Reynolds*, 108 Ind. 353; 9 N. E. Rep. 287.

31. Realty, When and to Whom Assessed—

21. Real property shall be assessed in the place where situated, and to the owner, if known; if not, then to the occupant, if any; and if there be no occupant, then as unknown. Property in the control of an executor, administrator, guardian or trustee shall be assessed to such executor, administrator, guardian or trustee. (3 Burns R. S. 1901, §8431.)

1. *Omitted Personal Property.*—Omitted personal property may be described as "omitted personal property" as in this manner, namely, "omitted personal property for the year 1889, \$20,000." *Brunson v. Starbuck*, 32 Ind. Ap. 457; 70 N. E. Rep. 163.

3—Tax Laws.

ARTICLE 5—DEFINITIONS AND RULES.

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| 42. Proceeds of Sale of Exempt Realty. | 46. Public Lands. |
| 43. Nursery Stock. | 47. Wabash and Erie Canal. |
| 44. Deeds Held as Security. | 48. Undivided Realty. |
| 45. Franchises. | 49. Partition—Transfer. |
| 46. Interest on Exempt Security. | 50. When Clerk of Court to Make Transcript for Taxation—Transfers. |
| 47. Real Estate Mortgaged. | 51. Owner or Occupant. |
| 48. Merchants—Consignees. | 52. Rule, When Township Line Divides. |
| 49. Manufacturers. | 53. Description of Realty. |
| 50. Transient Persons. | 54. Lots and Subdivisions. |
| 51. Engines and Machinery. | 55. Description of Personality. |
| 52. Pawnbrokers. | 56. Affidavit of Taxless Persons. |
| 53. Books and Papers—Official Inspection. | 57. "Person" Defined. |
| 54. Inspection Permitted. | |
| 55. Leasehold Estate. | |

[Acts 1891, p. 199. Approved and in force March 6, 1891.]

42. Proceeds of Sale of Exempt Property—

22. When real estate is exempt from taxation in the hands of the holder of the fee and the same is contracted to be sold, the amount paid thereon by the purchaser, with the value of the improvements thereon until the fee is conveyed, shall be held to be personal property, and be listed and assessed as such in the place where the land is situated. (3 Burns R. S. 1901, §8432.)

43. Nursery Stock—

23. The stock of nurseries, growing or otherwise, in the hands of nurserymen shall be listed and assessed as merchandise. (3 Burns R. S. 1901, §8433.)

44. Deeds Held as Security—

24. When the deed for real estate is held for the payment of a sum of money, such sum so secured shall be held to be personal property, and shall be listed and assessed as credits. (3 Burns R. S. 1901, §8434.)

45. Franchise—

25. Every franchise granted by any law of this State, owned or used by any person or corporation, and every franchise or privilege used or enjoyed by any person or corporation shall be listed and assessed as personal property. (3 Burns R. S. 1901, §8435.)

1. *Franchises Are Assessable.*—The franchises of railroads, street railway companies and other companies are subject to taxation. Smith, 1892, p. 45.

2. *Franchise Subject to Taxation.*—The franchise of a corporation doing business in this State, whether organized under the laws of Indiana or of another State, is subject to taxation, and should be appraised at its real cash value. Smith, 1892, p. 84.

36. Interest on Exempt Security—

26. Where bonds or stocks are now or may hereafter be exempted from taxation, the accrued interest on such bonds or dividends on such stocks shall be listed and assessed, unless otherwise exempted, without regard to the time when the same is to be paid. (3 Burns R. S. 1901, §8436.)

1. *Repealed.*—Section 27 has been repealed. Acts 1907, p. 45.

37. Real Estate Mortgaged—

28. In cases of mortgaged real estate the mortgagor shall, for the purpose of taxation, be deemed the owner until the mortgagee shall have taken possession of the mortgaged premises, after which the mortgagee shall be deemed the owner. (3 Burns R. S. 1901, §8438.)

1. *Mortgagor Liable.*—By the above section of the tax law it is expressly provided that in cases of mortgaged real estate, the mortgagor, for the purpose of taxation, shall be deemed to be the owner until the mortgagee shall have taken possession of the mortgaged premises. It is true that, when the lien for taxes once attaches to land, it will be subject thereto in the hands of whomsoever the title may thereafter pass. The liability for taxes on property, under the laws of this State terminate only with payment. Miller v. Vollmer, 153 Ind. 26; 53 N. E. Rep. 949.

2. *Heirs not Liable.*—A crop of corn planted by the heirs after the death of the mortgagor, who died after foreclosure and sale, and which crop matured before the year of redemption, is not liable for the payment of taxes charged against the mortgagor. Gregory v. Wilson, 52 Ind. 233.

38. Merchants—Consignees—

29. Every person who shall own or have in possession, or subject to his control, any personal property within this State, with authority to sell the same, which shall have been purchased either in or out of this State, with a view of being sold at an advanced price or profit, or which shall have been consigned to him from any place out of this State for the purpose of being sold, at any place within this State, shall be held to be a merchant; and at any time when he shall be, in pursuance of this act required to make out and deliver to the Assessor a statement of his other personal property, he shall, in like manner, make a statement of and list as merchandise all property held or owned by him appertaining to his business as a merchant, and, in addition thereto, attest, on oath or affirmation, the true cash value of all such property appertaining to his business as a merchant, including, with amount on hand, in actual possession, all amounts purchased, with a view to possession or profit. (3 Burns R. S. 1901, §8439.)

1. *Merchandise Purchased for Shipment.*—Merchandise purchased in this State with a view to be shipped to another State for sale is taxable in this State. Rieman v. Shepard, 27 Ind. 288.

2. *Property Awaiting Shipment.*—Property temporarily awaiting shipment to the residence of the owner outside of this State is not subject to taxation

here. *Standard Oil Co. v. Bachelor*, 89 Ind. 1; *Herron v. Keeran*, 59 Ind. 472; 26 Am. Rep. 87.

3. *Property Awaiting Shipment for Indefinite Time*.—But where property is collected even though it may be at the point of final shipment, to await indefinitely the owner's pleasure or the rise of markets, or to undergo a partial process of manufacture, or for any other cause having no relation to the preparation for, or facilities or exigencies of, transportation, it will be held to have acquired a situs, making it subject to taxation here. *Standard Oil Co. v. Combs*, 96 Ind. 179; *Board, etc., v. Standard Oil Co.*, 103 Ind. 302.

39. Manufacturers—

30. Every person who shall purchase, receive or hold personal property of any description for the purpose of adding to the value thereof, by any process of manufacture, refining, rectifying, or by the combination of different materials, with a view of making a gain or profit by so doing, shall be held to be a manufacturer, and he shall at all times, when, by virtue of this act he is required to, make and deliver to the Assessor a statement of the amount or value of his other personal property subject to taxation; also, in like manner, state the value estimated, as provided in the preceding section, of all articles purchased, received or otherwise held for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying, or refining, including the value of all manufactured articles on hand in actual possession or elsewhere held for sale, and in addition thereto attest on oath the true cash value of all such property appertaining to his business as a manufacturer, including manufactured articles. (3 Burns R. S. 1901, §8440.)

40. Transient Persons—

31. Whenever at any time during any year, any transient person shall temporarily locate in any township, city, town or village for the purpose of selling or disposing of goods, wares, and merchandise, and shall offer to sell or otherwise dispose at wholesale or retail of any goods, wares or merchandise, it shall be the duty of the proper Assessor for the time being, of the place where such person shall locate, forthwith to call upon such person and demand of him the true value in money of all his stock in trade, and in case such person shall neglect or refuse to return such value under oath within twenty-four hours after such demand, then it shall be the duty of such Assessor to determine the same as in other cases, and in either case he shall forthwith return such valuation to the Auditor of the county, who shall cause the same to be entered at once on the current tax duplicate in the hands of the Treasurer, and to compute taxes thereon at the rate of assessment for State, county, township and municipal purposes at which current taxes on such duplicates are assessed, in the same manner as omitted property on the first day of April last preced-

ing is entered upon the duplicates and assessed, but without penalties for delinquencies; and shall cause such taxes to be collected immediately: Provided, however, That in case such transient person show by proper Treasurer's receipts for taxes that all taxes for the current year have been paid on such stock of goods by him in any other county in Indiana; in such event no assessment shall be made against such stock of goods, wares or merchandise, for that year. (As amended March 1, 1897; Acts, 1897, p. 99.) (3 Burns R. S. 1901, §8441.)

1. *Property Acquired After May 15th*.—A bona fide resident of this State who has made a duly verified schedule of all the property owned by him on March 1st of any year, can not be again assessed under the above section for property acquired after May 15th of such year simply because he has temporarily located in a county other than the county of his bona fide residence to dispose of the property so acquired. *Woodward v. Jacobs*, 27 Ind. App. 188; 60 N. E. Rep. 1015.

2. *Constitutional*.—In its application to the inhabitants of this State, the validity of the above section has been doubted. *Woodward v. Jacobs*, 27 Ind. App. 188; 60 N. E. Rep. 1015.

3. *Taxed in Only One County*.—If a transient merchant has paid the taxes upon his goods in one county, he can not be compelled to pay taxes again on the same stock, but where his stock is replenished, taxes are collectible on such new stock. *Sinsyan v. Rohan*, 36 Ind. App. 405; 70 N. E. Rep. 176.

41. Engines and Machinery—

32. Every person owning a manufacturing establishment of any kind, and every manufacturer, shall list as a part of his personal property, the value of all engines and machinery of every description used or designed to be used in any process of refining or manufacturing (except such fixtures as shall have been considered as a part of any tract, or real property), including all the tools and implements of every kind used for the purpose aforesaid. (3 Burns R. S. 1901, §8442.)

42. Pawnbrokers—

33. Every person or company engaged in the business of receiving property in pledge or as security for money or other thing advanced to pawn or pledger, shall be held to be a pawnbroker, and shall, at the time required by this act, return under oath the value of all property pledged and held by him as a pawnbroker on hand on the first day of March annually, and taxes shall be charged upon the true cash value of such property to such pawnbroker, the same as other property. (As amended February 25, 1903. Acts 1903, p. 49; 4 Burns Supp., §8443.)

43. Books and Papers—Official Inspection—

34. If in listing and assessing property for taxation, any Township Assessor or County Assessor may have good reason to

believe that any person, firm or corporation within his jurisdiction has omitted to return for taxation any taxable property that should have been returned by such person, firm or corporation, then such Township Assessor or County Assessor, as the case may be, may file his affidavit in the Circuit Court of the county wherein such tax return should have been made, or with judge thereof in vacation, setting forth his belief that certain property, to be named in the affidavit, has been unlawfully omitted from a certain specified tax return of a designated person, firm or corporation, within his jurisdiction, and that some other person, firm or corporation, to be named in the affidavit, has in his or its possession certain specified books or papers containing evidence tending to show such unlawful omission of taxable property. Upon the filing of such an affidavit a writ shall forthwith issue and be served by the Sheriff of said county, requiring the person, firm or corporation having possession of such books or papers to permit the inspection, by the affiant, of such books or papers, or so much thereof as may be specifically named in such writ, and being only such books or papers, or so much thereof, as may contain evidence tending to show the unlawful omission of taxable property complained of in said affidavit. And the court or the judge in vacation issuing such writ shall, for the purpose of enforcing obedience thereto, possess and exercise all the powers usually possessed and exercised by it or him in contempt proceedings. Like writ may be issued and enforced upon like affidavits, made either by a County Auditor, by the Auditor of State, by any member of a County Board of Review, or by any member of the State Board of Tax Commissioners. All costs incurred on account of the filing of any affidavit, the issue of a writ thereon, and the service of such writ, shall be a charge against the county in which such proceedings are had and shall be allowed by the Board of Commissioners thereof: Provided, however, If, as a result of such proceedings, it is found that such designated person, firm or corporation have unlawfully failed to return property for taxation, then the county shall recover the costs from such person, firm or corporation. Every Township Assessor, County Assessor, County Auditor, Auditor of State, Board of Review and Board of Tax Commissioners shall have power to administer all necessary oaths or affirmation in the discharge of their duties. It shall be the duty of all Assessors, and all other officers charged with the duty of listing property for taxation, or charged with the duty of collecting taxes, to give in writing all information they may acquire in reference to the concealment of property from taxation by any person, firm or corporation before mentioned, to the County Auditor, Auditor of State, or to the County Boards of Review or State Board of Tax Commissioners. (As amended March 5, 1901. Acts 1901, p. 109.) (3 Burns R. S. 1901, §8444.)

44. Inspection Permitted—

2. No inspection of the books or papers of any person, firm or corporation by any tax officer shall be permitted or required except as specified in the foregoing section, and all laws or parts of laws in conflict herewith are hereby repealed. (Act of March 5, 1901. Acts 1901, p. 109.) (3 Burns R. S. 1901, §8444a.)

1. *Decisions Under Prior Law.*—The following are decisions rendered before Section 40 above was amended and before Section 41 was enacted. They do not apply to the law as now in force. *State v. Real Estate, etc., Assn.*, 151 Ind. 502; 51 N. E. Rep. 1061; *Satterwhite v. State*, 142 Ind. 1; 40 N. E. Rep. 654; *State v. Workman's, etc., Assn.*, 152 Ind. 278; 63 N. E. Rep. 108; *Crowder v. Riggs*, 153 Ind. 158; 53 N. E. Rep. 1019; *Co-operative Building and Loan Assn. v. State*, 156 Ind. 463; 60 N. E. Rep. 1015; *Applegate v. State*, 158 Ind. 119; 63 N. E. Rep. 18.

2. *Constitutional.*—A statute permitting a taxing officer to examine books of a taxpayer in searching for omitted property is constitutional. *Co-operative, etc., Assn. v. State*, 156 Ind. 463; 60 N. E. Rep. 1015; *Washington National Bank v. Daily*, 166 Ind. 631; 77 N. E. Rep. 53.

3. *Laws Liberally Construed.*—Laws providing measures for reaching omitted property are in aid of the common right of all the people, who are the sovereigns, and should be liberally interpreted in support of the taxing power. *Co-operative, etc., Assn. v. State*, 156 Ind. 463; 60 N. E. Rep. 1015; *Hunter Stone Co. v. Woodard*, 152 Ind. 474; 53 N. E. Rep. 947; *Graham v. Russell*, 152 Ind. 186; 52 N. E. Rep. 806; *Fell v. West*, 35 Ind. 20; 73 N. E. Rep. 719; *Washington National Bank v. Daily*, 166 Ind. 631; 77 N. E. Rep. 53.

4. *Examination of Bank Books.*—A county assessor is not entitled to examine the accounts of any bank depositor regardless of the question whether the depositor is required to pay taxes in this State. *Applegate v. State*, 158 Ind. 119; 63 N. E. Rep. 16.

5. *Appeal, Party.*—Where a county assessor files an affidavit under this section against a bank, and it appears and defends, and the court decides adversely to the bank, such assessor is an adversary party, and if the bank appeals it must make him a party thereto. *Ex parte Washington National Bank*, 163 Ind. 476; 72 N. E. Rep. 260.

6. *Affidavit.*—An affidavit by a county assessor showing that he is informed and believes a certain bank has in its possession certain books and papers containing evidence of omitted taxable property, and praying for an order of inspection of such evidence, is sufficient without stating affiant's ground for believing that the bank books would disclose omitted property, and without giving the character, dates and amounts of the property and credits disclosed by such books. *Washington National Bank v. Daily*, 166 Ind. 631, 635; 73 N. E. Rep. 53.

7. *Disclosure Compelled.*—A national bank may be compelled to disclose the names of the depositors, and the amounts of the deposits, under the compulsory process of a State court, in order to ascertain whether any money deposited therein subject to taxation within the county has not been duly returned by the owners. *Washington National Bank v. Daily*, 166 Ind. 631; 77 N. E. Rep. 53.

8. *Duty of Banks and Persons Having Information.*—Any one who avoids payment of his ratable share of taxes violates the law, and when such evasion is being attempted it is the public duty of banks, as well as of all other persons or corporations having knowledge or evidence of such attempt, when called upon by proper authorities, to disclose it, whether written or parol. There is no more moral excuse or legal justification for concealing the delinquency of a "tax dodger" than of any other class of lawbreakers. *Washington National Bank v. Daily*, 166 Ind. 631; 77 N. E. Rep. 59.

45. Leasehold Estate—

35. When real estate which is exempt from taxation, is leased to another whose property is not exempt, and the leasing of which does not make the real estate taxable, the leasehold estate, and the appurtenances shall be listed as the property of the lessee thereof or his assignee, as real estate. (3 Burns R. S. 1901, §8445.)

46. Public Lands—

36. Government lands, canal lands, university and school lands, purchased prior to the first day of March, shall be taxable for that year and annually thereafter. All school lands heretofore or hereafter sold shall be taxable from and after the sale and delivery of the certificate. (As amended February 25, 1903. Acts 1903, p. 49; 4 Burns Supp. §8446.)

1. *Under Prior Laws.*—Prior to the act of December, 1872, purchasers of school lands were not liable for taxes thereon until after they obtained conveyances. *Wiley v. Koons*, 49 Ind. 272; *Henderson v. State*, 53 Ind. 60.

2. *Deed not Necessary.*—In order to tax the lands the execution of a deed by the proper officer conveying the land to the purchaser is not necessary. See *Board v. Luckman*, 57 Ind. 96.

3. *Contract to Convey.*—Real estate for which the State has issued a contract to convey is subject to taxation. *Michener*, 1888, p. 12.

4. *School Lands.*—"In all cases where school lands have been sold and a certificate has been issued to the purchaser or entered or recorded in the proper office or otherwise and the purchaser has entered into possession and paid a part or the whole of the purchase-money, or could have entered into occupancy, such lands shall be deemed and held as having been sold so as to make them liable to taxation, within the meaning of the law, as fully and completely as they would have been had a deed been made and delivered, and the fee had passed to the purchaser; and all appraisements of land so sold, and all assessments of the same for taxes, and all levies and collections of taxes thereon heretofore made, shall be, and are hereby legalized and declared to be lawful and valid, and shall in no wise be subject to question by reason of such sale not having been consummated by execution and delivery of deed. But whenever any Treasurer fails to collect any delinquent taxes for any year, and the same is carried over to the next year's duplicate, together with all penalties and interest, such Treasurer shall not be entitled to any fee for collecting the delinquent part of said duplicate, more than he is entitled to by law for collecting the duplicate of the current year." Acts 1891, p. 160; Sec. 246.

47. Wabash and Erie Canal—

37. All mills, manufactories, warehouses and other structures, with appurtenances and fixtures erected or placed upon any lands leased by the Board of Trustees of the Wabash and Erie Canal, shall be assessed to the lessees of such lands or their assigns, in possession of and occupying the same; but the lands or lots on which such mills, manufactories, warehouses or other structures are situate, shall be assessed to the owners thereof, and all locks, lands, dams, feeders, mill sites and water power and canal led, with land appurtenant thereto, shall be assessed to the owners of said Wabash and Erie Canal, and for the purpose of valuation,

the entire property in any township, shall be considered as an entirety, and shall be described in the assessment and in the tax duplicate as "The Wabash and Erie Canal." All the above described property shall be taxable from and after the sale of said property under the decree of the United States Court, in the case of Thomas K. Gapen v. Thomas Dowling et al. Nothing herein contained shall, in any way, prevent or interfere with the assessment of so much of said property as may lie in any city or town, by the city or town authorities for taxation for municipal purposes. (3 Burns R. S. 1901, §8447.)

1. *Under Prior Laws.*—*Hanna v. Board*, 8 Blackf. 352.

48. Undivided Realty—

38. The undivided real estate of any deceased person, not in control of an executor or administrator, may be listed to the heirs or devisees of such person, without designating any of the heirs or devisees by name, until they shall have given notice to the Auditor of the county or counties in which such real estate is situated, of the division of the same and the names of the several heirs or devisees, and the proportions allotted to each, and each heir or devisee shall be liable for the whole of such tax, and shall have a right to recover of the other heirs or devisees their respective proportions thereof, when paid by him, and interest thereon, and the lien for the proportion of taxes paid on the different shares of the land shall vest in the person who pays the taxes. (3 Burns R. S. 1901, §8448.)

1. *Failure to Have Transfer Made.*—When tenants in common have not had the proper transfers made, their lands may be assessed and taxed without designating their separate interests, and purchasers at tax sales may enforce liens jointly against the owners. *Jenkins v. Rice*, 84 Ind. 342.

2. *Payment by One Heir.*—One to whom land has descended jointly with other heirs, may pay the taxes upon the entire tract and enforce contributions from the other tenants in common. *Eads v. Retherford*, 114 Ind. 273; 16 N. E. Rep. 587.

49. Partition—Transfer—

39. Whenever a division or partition has been made, or other changes take place in the ownership of any tract or lot of land, or any part thereof, by conveyance, sale, devise, or descent, the County Auditor on being satisfied thereof, shall transfer the same on the last appraisal list, and apportion the same, and the valuation thereof, with all delinquent taxes, to the several owners. (3 Burns R. S. 1901, §8449.)

1. *Legal Title.*—There must be a transfer of the legal title to lands before there is a transfer for taxation. *Mullikin v. Reeves*, 71 Ind. 281.

2. *Tax Duplicate as Evidence.*—Where it is in controversy whether a parcel partition had been made, the tax duplicate showing that the lands were taxed to the respective persons to whom they were supposed to have been allotted, is admissible in evidence as tending to show the partition. *McSweeney v. McMillen*, 96 Ind. 298.

[Acts 1907, p. 107. Approved February 27, 1907. In force April 10, 1907.]

50. When Clerk of Circuit Court to Make Transcript for Taxation—Transfers—

1. In all actions for partition of real estate in any court in this State, and in all other cases where the transfers to the parties entitled thereto are made by judgment only, and not by deed, the clerk shall make out a transcript of such judgment, showing the transfer aforesaid, under his hand, and the seal of the court ordering the same, stating therein the volume and page of the order book in which such judgment is entered, and deliver the same to the auditor of the county, wherein such real estate is situated, who shall forthwith make the entries upon his transfer book, and note such transfer, as in other cases; upon the back of such transcript, and shall thereupon deliver the same to the recorder of such county, who shall record the same in the record of deeds in his office. And the said clerk, auditor and recorder shall each receive for such services, from the person entitled to such real estate, such fees as they are now, by law, entitled to receive for similar services, which shall be taxed by the court rendering such judgment as part of the costs in such proceedings as may result in the same: *Provided, however,* That there shall be no more than one transcript of any such judgment made out and recorded as aforesaid in any case whatever.

1. *Note.*—Prior to 1859, duty of assessor. *Noble v. Indianapolis*, 16 Ind. 506.

[Acts 1891, p. 199. Approved and in force March 6, 1891.]

51. Owner or Occupant—

40. Lands occupied by any person, not the owner thereof, shall be listed in the name of the owner, if known, otherwise as the lands of unknown owners; and, for taxes, if paid by the occupant, he shall have his action against the owner, and a lien upon such lands until the same, with interest, is repaid to him. (3 Burns R. S. 1901, §8450.)

1. *General Rule.*—As a general rule, the statute looks to the legal owner as the party by whom the lands in the State are to be listed, and to whom they are to be charged for taxation. *Willey v. Koons*, 49 Ind. 272; *Overstreet v. Dobson*, 28 Ind. 256; *Foreman v. Chase*, 68 Ind. 500.

52. Rule, When Township Line Divides—

41. When the lines between two townships divide a tract of land surveyed differently from the congressional surveys, if listed to the owner thereof, he being a resident of either township in which a part of such tract of land may lie, or if listed to the occupant under the preceding section of this act, the same shall be listed in the township in which such owner or occupant

resides; and in all other cases, the same shall be listed in the township in which the greater part thereof lies. (3 Burns R. S. 1901, §8451.)

53. Description of Realty—

42. Whenever the real estate to be listed and assessed can not be described by a congressional subdivision, or by the number of lot or plat, the same shall be sufficiently described for the purpose of listing, assessing, collecting the tax thereon, and conveying the title thereto, when the same is sold for non-payment of taxes, by reference to any sufficient and intelligible description of such land, or lot, in the deed, mortgage, will, or other public record of the county, substantially in the following manner, the number of acres, book and page, and place being changed to suit each particular case:

"Fifty acres in survey, No. 158, of Clark's grant, as described in deed book 64, page 219, of the Recorder's office of Clark County," and when no sufficient and intelligible description of such real estate can be obtained for such reference by the Assessor or other officer listing such land, from the owner or public records of the county, such officer shall cause the County Surveyor to survey and plat such land and furnish him with such description; and a reference to such description in such survey, substantially in the following manner, shall be sufficient description of such land for the purposes above mentioned:

"Fifty acres in survey No. 100, of Clark's grant, as designated on the plat thereof made by the County Surveyor, on theday of....., 18....."

The cost of such survey shall be entered by the Auditor on the tax duplicate, and collected as a part of the tax on said land. It shall be sufficient to describe the real property assessed in the manner heretofore in use by initials, letters, abbreviations and figures. (3 Burns R. S. 1901, §8452.)

1. *Deficient Description—Title.*—When a description of lands is so deficient that it cannot be identified, a purchaser at a tax sale will not obtain title to the lands sold. *Sharpe v. Dillman*, 77 Ind. 280.

2. *Deficient Description—Lien.*—A description of land may be too indefinite to convey title, yet sufficient to give a purchaser at tax sale a lien thereon. *Cooper v. Jackson*, 71 Ind. 244; *Sloan v. Sewell*, 51 Ind. 180; *Reed v. Earhart*, 38 Ind. 159; *Peckham v. Millikan*, 90 Ind. 352; *Millikan v. Lafayette*, 118 Ind. 323; 20 N. E. Rep. 847; *Brown v. Reeves*, 31 Ind. App. 517; 68 N. E. Rep. 640.

3. *Sufficient Description.*—If the description of the land on which taxes have been paid is such that it can be identified as the property owned by the person, and liable to taxation at the time of the assessment, it is sufficient, and the taxes cannot be recovered back on the ground that the purchase at the tax sale obtained no title. *McWhinney v. Logansport*, 132 Ind. 9; 31 N. E. Rep. 449.

4. *Abbreviations.*—Well known abbreviations may be used in describing the real estate assessed. *Hannah v. Collins*, 94 Ind. 201.

5. *Evidence to Explain Abbreviations.*—Parole evidence may be admissible to explain abbreviations. *Barton v. Anderson*, 104 Ind. 578.

54. Lots and Subdivisions—

43. Whenever any tract of land has been platted into lots or subdivisions the description of any such lot or subdivision by reference to its number on said plat, and the number or designation of the plat, shall be a good, valid and sufficient description thereof, for the purpose of listing, assessing, collecting the tax thereon, and conveying the title thereto, when sold for the non-payment of taxes. (3 Burns R. S. 1901, §8453.)

55. Description of Personalty—

44. In entering personal property upon the proper tax books for the purpose of taxation, it shall be a sufficient description of the same to use the words "personal property," and such phrase shall comprehend and embrace all species of personal property belonging to the party charged therewith, on the tax books, and no more specific description or designation thereof shall be necessary. (3 Burns R. S. 1901, §8454.)

1. *Omitted Property.*—In entering omitted property on the assessment list or tax duplicate, it is sufficient to describe it as "omitted personal property for the year 1889, \$20,000." *Brunson v. Starbuck*, 32 Ind. App. 457; 70 N. E. Rep. 163.

56. Affidavit of Taxless Person—

45. Any person who, being called upon to list property, either on his own account or for others, subject to taxation, claims to have none, shall be required by the Assessor or other proper officer to make oath in writing to the truth of his claim in that behalf, and proper blank forms for such affidavit shall be provided, and such person shall be subject to the pains and penalties of perjury for a false oath. (3 Burns R. S. 1901, §8455.)

57. "Person" Defined—

46. The word "person," as used in this act shall be held to include and mean "firm," "company," "association," or "corporation." (3 Burns R. S. 1901, §8456.)

1. *Dog Taxation.*—The next section, being section 47 of the original act, was repealed by the act of 1897, set out hereinafter at length. (Burns R. S. 1901, §8457.) See sections 183 to 197.

ARTICLE 6—LISTING PERSONALTY.

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| 58. Blanks — Statements — Valuations. | 64. Mutes—Blind—Insane—Lists. |
| 59. Interrogatories. | 65. False Statements—Penalty. |
| 60. Credits and Chattels. | 66. Giving False List of Taxables. |
| 61. Refusal to List — Duty of Assessor. | 67. Assessor's Valuation. |
| 62. Evasion—Assessor's Duty. | 68. Penalties. |
| 63. Blanks—Form of "Schedule." | 69. Sickness or Absence — Proceedings. |

[Acts 1891, p. 199. Approved and in force March 6, 1891.]

58. Blanks—Statements—Valuations—

48. On the first day of March of each year, or as soon thereafter as practicable, and before the fifteenth day of May, the Assessor shall call upon each person required by this act to be assessed, and furnish him or her with the proper blanks for the purpose, and thereupon such person shall make to such Assessor a full and correct description of all the personal property, of which such person was the owner on the first day of March of the current year, and such person shall also, at the same time, make separate, full and true statements in like manner, in writing, distinctly setting forth in each a correct description of all the personal property held, possessed or controlled by him as executor, administrator, guardian, trustee, receiver, partner, agent, attorney, president or accounting officer of a corporation, consignee, pawnbroker, or in any representative or fiduciary capacity, and he shall fix what he deems the true cash value thereof to each item of property for the guidance of such Assessor, who shall determine and settle the value of each item, after examination of such statement, and also an examination under oath of the party or any other person, if he deems it necessary. In determining and settling such valuation, he shall be governed by what is the true cash value, such being the market or usual selling price at the place where the property shall be at the time of its liability to assessment, and if there is no market value, then the actual value. In making the valuation, annuities and royalties shall be valued at their present cash value. For the purpose of making such statements the person to be assessed shall receive the proper blanks from the Assessor. (As amended February 25, 1903. Acts 1903, p. 49; 4 Burns Supp. §8458.)

1. *List Sworn To.*—The list of personal property must be sworn to by the owner of the property, except where agents under section 17 make out the list. *State v. Reynolds*, 108 Ind. 853; 9 N. E. Rep. 287.

2. *Lists as Evidence.*—Assessment lists properly made out are admissible in evidence. *Painter v. Hall*, 75 Ind. 208; but they must have been shown to have been executed by the taxpayer before they are evidence against him. *Bartlett v. Rander*, 11 Ind. App. 419; 39 N. E. Rep. 175; *Lafever v. Johnson*, 79 Ind. 554; *Curmal v. Rauh*, 100 Ind. 247.

3. *Schedule Controls.*—The schedule provided by the tax law controls in case of conflict with any other portion of that law. *Wasson v. First National Bank*, 107 Ind. 206, 212; 8 N. E. Rep. 97; *Clark v. Carter*, 40 Ind. 190; *Matter of Campbell*, 71 Ind. 512; *Evansville Bank v. Britton*, 105 U. S. 322.

4. *What is a Valid Assessment.*—To constitute a valid assessment it must be made by the proper officer. There must, at least, be some attempt toward an assessment, and a compliance with the law by some officer authorized to make the assessment. *Evansville, etc., R. R. Co. v. Hays*, 118 Ind. 214, 220; 20 N. E. Rep. 736.

5. *Administering Oaths.*—The Assessor and his deputies have authority, under the law, to administer all necessary oaths in connection with tax lists. *State v. Reynolds*, 108 Ind. 353; 9 N. E. Rep. 287.

6. *Valuation.*—While the person listing property is required to place a valuation upon it, such valuation will be regarded only as a mere statement of opinion by him, and the assessor must determine and settle the value of each item himself. *Florer v. Sherwood*, 128 Ind. 495, 500; 28 N. E. Rep. 71. But when the assessor has fixed the value the county auditor can not increase it, although he may assess property either purposely or inadvertently omitted. *Parkinson v. Thompson*, 104 Ind. 609; 73 Ind. 100.

7. *Fair Cash Value.*—The taxable value of property is its fair cash value, a fair cash value being the market or selling price where the property shall be at the time of its liability to assessment, and if there be no market value, then it is the actual value that rules. *Willis v. Crowder*, 134 Ind. 515; 34 N. E. Rep. 315. A complaint for an injunction must show and the plaintiff must prove that the assessment was more than the fair cash value. *Fell v. West*, 35 Ind. App. 20; 73 N. E. Rep. 719.

8. *Adopting Owner's Valuation.*—Assessors are presumed to adopt the valuation fixed by the owner of property, unless such owner fixes a different value. *Du Bois v. Board*, 4 Ind. App. 138; 30 N. E. Rep. 206.

9. *Failure to Add Dollar Mark.*—A failure to add the dollar mark (or any other similar sign) in front of the amount of valuation of property in the assessment sheets does not render the assessment void; and this is especially true if it can be gathered from the entire assessment that the dollar mark was intended to be used but was accidentally omitted. *Midland Ry. Co. v. State*, 11 Ind. App. 433; 38 N. E. Rep. 57.

10. *Irregularities.*—Irregularities do not affect the correctness of a tax assessment, if the proceedings are substantially correct, and the assessment is fair and just. *Reynolds v. Bowers*, 138 Ind. 434; 39 N. E. Rep. 756; 37 N. E. Rep. 962.

11. *Evidence of Length of Time to Assess Township.*—The question as to how long it would take to assess a township for taxation, and how much of such work could be done in a day, are not subjects of expert testimony. *Board v. Redifer*, 32 Ind. App. 93; 69 N. E. Rep. 305.

12. *Administrator or Executor.*—It is the duty of an administrator or executor to list for taxation the property of his decedent's estate which was in his possession on March 1st. *Cullop v. City of Vincennes*, 34 Ind. App. 667; 72 N. E. Rep. 166.

13. *Agent.*—Must list property of his principal. Sec. 23.

14. *Unequal Assessment.*—Where property is assessed for more than its true cash value, or for more than other property of equal value, such assessment is unjust. *Fell v. West*, 35 Ind. App. 20; 73 N. E. Rep. 719.

59. Interrogatories.—

49. The person called upon or required by the Assessor to list property shall answer in writing under his signature, the following interrogatories under oath, upon the proper blank form thereof to be furnished by the Assessor, who shall also administer the oath:

Interrogatory One. Are you or were you on the first day of March of the present year the executor of the last will or the administrator of the estate of any deceased person, or guardian of the estate of any infant or person of unsound mind or the trustee of the property of any person, or the receiver of any corporation, association or firm, or the agent or attorney, or banker, investing, loaning or otherwise controlling the money or other property of any other person residing in this State, or the president or accounting officer of any corporation, or a partner, consignee or pawn-broker? If yes, designate for whom you were then or now are acting in such representative or fiduciary capacity, and if you were or are now acting under the authority of any particular court, name the court and also state to what court you report.

Interrogatory Two. Have you before the first day of March of the present year either personally or through the agency of others caused all or any part of your taxable money or other property to be temporarily converted, either by sale, borrowing, exchange or in any other manner into bonds or other securities of the United States not taxable, or any other property not taxable, with the intention to pay back, return or exchange, or sell back such property after you have made out your tax statement, for the purpose of evading the payment of taxes on such property; or did you on or after the first day of March of the present year, and before you saw this interrogatory, pay back, return or re-exchange, or sell back such property for the purpose aforesaid?

Interrogatory Three. If you have converted any of your money or property, or money or property of any other person, as inquired of you, then state when the same was so converted or invested and the kind and the amount or the value thereof. (As amended February 25, 1903. Acts 1903, p. 45; 4 Burns Supp. §8459.)

1. *Injunction.*—If persons purposely convert taxable property into non-taxable property to avoid taxation, a court of equity will not enjoin the collection of a tax assessed upon such non-taxable property. *Oeden v. Walker*, 50 Ind. 400. (See *Stilwell v. Carwin*, 55 Ind. 433; 23 Am. Rep. 672.) *Durham v. State*, 6 Ind. App. 23; 32 N. E. Rep. 104.

2. *County Board of Review—Mistake—Injunction.*—While a County Board of Review has no right to add to the tax list legal tender notes (greenbacks), held in a bona fide manner March 1st, still it is within its province to determine whether a taxpayer has temporarily converted his taxable money into these notes for the express purpose of evading the payment of taxes thereon; and if it make a mistake or reach a wrong conclusion, a suit cannot be maintained to prohibit the collection of the taxes assessed thereon. *Senour v. Matchett*, 140 Ind. 636; 40 N. E. Rep. 122; *Crowder v. Riggs*, 153 Ind. 158, 160; 53 N. E. Rep. 1019; *Mitchell v. Board*, 1 Otto (U. S.) 206.

60. Credits and Chattels.—

50. Every person required by this act to make or deliver such statement or schedule shall set forth an account of the property held or owned by him as follows:

PERSONAL PROPERTY—CREDITS.

First. All annuities and royalties.

Second. All bonds, notes, mortgages, accounts, demands, claims, and other indebtedness owing to such person whether such indebtedness is owing from individuals or from corporations, public or private, and whether such debtors reside within or without the State.

Third. All *bona fide* indebtedness owing to such person which shall be held to mean notes and accounts only.

PERSONAL PROPERTY—CHATELS.

First. All shares in banks organized in this State under any law of this State, or of the United States, and their full market value, after deducting the value of the real estate as taxed to the banks.

Second. All shares in foreign corporations, other than banks, and their value.

Third. All shares in other corporations, organized under the laws of this State, when the property of such corporation is not exempt by some law, or is not taxable to the corporation itself, and the cash value of such shares.

Fourth. All moneys, including circulating notes of national banking associations and United States legal tender notes and other notes and certificates of the United States payable on demand and circulating or intended to circulate as currency, and gold, silver and other coin.

Fifth. The value of all gold and silver plate, watches, diamonds and jewelry.

Sixth. The value of all household furniture and musical instruments.

Seventh. All patent rights describing them and giving the number of each patent and the value of each.

Eighth. The number and kinds of domestic animals and their value.

Ninth. All wagons, carriages and sleighs and their value.

Tenth. All mechanical and agricultural implements and tools and their value.

Eleventh. All machinery not affixed to real property and its value.

Twelfth. All ships, boats and vessels whether at home or abroad and their value.

Thirteenth. All merchandise and stock in trade and its value.

Fourteenth. All logs, timber, lumber, posts, ties, cord wood, staves or other felled or cut timber and their value.

Fifteenth. All other goods, chattels and personal property not heretofore specially mentioned and their value, except property specifically exempt from taxation. (As amended March 6, 1899. Acts 1899, p. 491.) (3 Burns R. S. 1901, §8460.)

1. *Law Must Authorize Taxation.*—Unless some statute authorizes the taxation of a particular kind of property it cannot be assessed for taxation. *State Board of Tax Commissioners v. Holliday*, 150 Ind. 219; 49 N. E. Rep. 14; 42 L. R. A. 826.

2. *Debts.*—See Section 3, notes 6, 7, 8, 9 and 17.

3. *Tax Certificate.*—See Section 3, notes 5 and 18.

4. *Insurance Policy.*—An insurance policy can not be taxed. *State Board of Tax Commissioners v. Holliday*, 150 Ind. 219; 49 N. E. Rep. 14; 42 L. R. A. 826.

5. *Property in Transit.*—See Section 3, notes 2, 3, 10 and 11.

6. *Funds in Receiver's Hands.*—See Section 3, note 12.

7. *Stock of Foreign Corporations.*—See Section 3, note 13.

8. *Newly Incorporated Corporations.*—The stock of corporations formed after March 1st can not be taxed or listed for taxation the year of their incorporation. *King v. City of Madison*, 17 Ind. 48.

61. Refusal to List—Duty of Assessor—

51. In every case where any person shall neglect or refuse to make out and deliver a sworn statement of his property to the Assessor as required by this act, or if the Assessor shall be in doubt whether such statement is correct, such Assessor is hereby authorized and required to examine on oath any other person whom he believes to have knowledge of the amount or value of any property owned or held by such person so neglecting or refusing; and such Assessor is authorized to set down and assess to such person such amount of personal property as he may deem just. (3 Burns R. S. 1901, §8461.)

1. *Form of Oath.*—It has been held that the following form of oath is unobjectionable: "Do you solemnly swear that you will answer such questions that may be asked you by the County Assessor, touching the persons whose property is affected by this examination, to wit:" stating the names of the persons about whose property the examination is held. *Burns v. State*, 5 Ind. App. 385; 31 N. E. Rep. 547.

2. *County Assessor—Refusal to Answer.*—The County Assessor is authorized to examine under oath any person whom he may suppose to have knowledge concerning omitted property, or the valuation of that which has been undervalued. If any person refuse to be sworn by the assessor for the purpose of eliciting such information, he may be fined or imprisoned for such refusal. *Burns v. State*, 5 Ind. App. 385; 31 N. E. Rep. 547.

3. *Indictment, Sufficiency.*—It is not necessary in an indictment charging an accused with a refusal to be sworn by the County Assessor to aver that the persons as to whose property the assessor was led to inquire were residents of any certain township in the county where the indictment is found by the grand jury, nor of any county of the State. *Burns v. State*, 5 Ind. App. 385; 31 N. E. Rep. 547.

4. *Duty to Answer Questions.*—If any person possess any information, and is within the limits of the assessor's territory, it is his duty to be sworn, when requested by the assessor, and if any improper question is propounded to him by the officer, he can refuse to answer. *Burns v. State*, 5 Ind. App. 385: 31 N. E. Rep. 547.

5. *Notice to Taxpayer.*—Notice to the taxpayer of the time and place of the examination of third persons concerning omitted property and its valuation need not be given by the taxing officer to the property owner until the time its assessment will be considered. *Co-operative, etc., Ass'n v. State*, 156 Ind. 463; 60 N. E. Rep. 163.

62. Evasion—Assessor's Duty—

52. Whenever, from the answer to the second interrogatory on the schedule, or from the evidence before him, the Assessor is satisfied that the person required to list his property has, since the first day of March of the preceding year, temporarily converted any part of his property into property not taxable for the purpose of preventing such property from being listed and of evading the payment of taxes thereon, such Assessor shall cause such property to be assessed at its true cash value. (As amended February 25, 1903. Acts 1903, p. 45; 4 Burns Supp. §5462.)

1. *Injunction*.—If persons purposely convert taxable property into non-taxable property to avoid taxation, a court of equity will not enjoin the collection of a tax assessed upon such non-taxable property. *Ogden v. Walker*, 59 Ind. 460. (See *Stilwell v. Corwin*, 55 Ind. 433; 23 Am. Rep. 672.) *Durham v. State*, 6 Ind. App. 23; 31 N. E. Rep. 547.

2. *Mistake of Board of Review—Injunction.*—See Sec. 59, note 2.

63. Blanks—Form of Schedule—

53. Before the first day of March of each year the County Auditor shall have in readiness for delivery to the Assessor the proper assessment books and necessary blanks for the assessment of all property, real and personal. The schedule, with affidavits thereto attached to be signed by the party, shall be in the following form, the names and places being changed to suit each person: The words "value," "cash value," "true value," or "valuation," whenever used in this act, shall be held to mean the usual selling price at the place where the property to which such term or terms are applied shall be at the time of assessment, being the price which could be obtained therefor at private sale, and not at force or auction sale. The party shall write the word "none" after each item, whenever he has no property to assess as named on such item, and no item shall be passed without being answered.

Schedule of all property held by of

Township.....County, Indiana, on the first day of March, 1902

Number.	PERSONAL PROPERTY—CREDITS.	Valuation by Party.	Valuation by Town- ship As- sessor.	Valuation by Commis-
1	All annuities.....	\$.....	\$.....	\$.....
2	All bonds	".....	".....	".....
3	All notes secured by mortgage.....	".....	".....	".....
4	All other notes	".....	".....	".....
5	All accounts	".....	".....	".....
6	Number of shares of stock in building, loan or sav- ings associations and value.....[No....]	".....	".....	".....
7	All other amounts due me from any person, firm or corporation, except for moneys deposited with banks, corporations, firms or individuals.....	".....	".....	".....
	Total credits due me.....	\$.....	\$.....	\$.....
From the sum of the above credits I claim a de- duction of my bona fide indebtedness, as follows: (1st). Value of all notes owing by me (as listed below)				
NAME OF PAYEE.		DATE OF MATURITY.	Amount.	
(2d.) Value of accounts owing [by] me.....				
Total bona fide indebtedness, which should be deducted from my credits				
Leaving balance for which I should be as- sessed				

Number.	PERSONAL PROPERTY—CHATELLE.	Valuation by Party.	Valuation by Town- ship As- sessor.	Valuation by County Assessor.
1	Amount brought forward from page 1.....	\$?	\$
1	Money on hand or on deposit with banks, trust companies, corporations, firms or individuals, or subject to my order, check or draft, including circulating notes of national banking associations and United States legal tender notes and other notes and certificates of the United States, payable on demand and circulating, or intended to circulate, as currency, and gold, silver or other coin.....			
2	All money loaned by me and not already entered on this schedule.....			
3	All interest owing me and not entered on this schedule.....			
4	All judgments and allowances in my favor entered in any court, and which I have not already entered on this schedule; also all legacies, bequests and other estates in expectancy.....			
5	All moneys invested in certificates of purchase at tax sales.....			
6	All moneys invested in certificates of purchase at sheriff's sales.....			
7	All moneys loaned to building, loan and savings associations.....			
8	All shares of stock in any corporation formed outside of this State; and also all shares of stock in any corporation formed in this State and conducting its business outside of this State.....			
9	Value of goods and merchandise on hand.....			
10	Value of all articles purchased, received or otherwise held for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying or refining.....			
11	Value of manufactured articles on hand.....			
12	Value of manufacturing tools, implements and machinery (other than engines and boilers, which shall be listed as such).....			
13	Value of agricultural tools, implements and machinery.....			
14	Value of gold and silver plate and plated ware.....			
15	Value of diamonds and jewelry.....			
16	Value of household furniture and library.....			
17	Value of mechanical tools, law and medical books, surgical instruments and medicines.....			
18	Value of firearms.....			
19	Value of poultry.....			
20	Value of nursery stock.....			
21	Value of property such person is required to list as pawnbroker.....			
22	Value of property of companies and corporations other than property hereinbefore enumerated.....			
23	Value of property of saloon and eating houses.....			
24	Value of market garden products.....			
25	Value of home made manufactured products.....			
26	Value of slaughtered animals.....			
27	Every franchise and description, and value.....			
28	Value of bricks, stone and all other building material on hand.....			

Number.	PERSONAL PROPERTY—CHATELLE.	Number.	Valuation by Party.	Valuation by Town- ship As- sessor.	Valuation by County Assessor.
29	Number of steamboats, sailing vessel, wharf boats, canal boats, barges or other water craft, either within or without this State, and value.....		\$	\$	\$
30	Number of patent rights, and value.....				
31	Number of steam engines, including boilers, and value.....				
32	Number of fire and burglar proof safes and value.....				
33	Number of typewriting machines and value.....				
34	Number of adding machines, and value.....				
35	Number of typesetting machines, and value.....				
36	Number of cash registers, and value.....				
37	Number of telegraph instruments, and value.....				
38	Number of telephones, and value.....				
39	Number of billiard, pigeonhole, bagatelle and other similar tables, and value.....				
40	Number of pianofortes, and value.....				
41	Number of organs and other musical instruments, and value.....				
42	Number of sewing machines and knitting machines, and value.....				
43	Number of watches and clocks, and value.....				
44	Number of carriages, wagons, coaches, hacks, carts, drays or other vehicles, and value.....				
45	Number of bicycles, tricycles, velocipedes, motorcycles, and value.....				
46	Number of hoop-poles, and value.....				
47	Number of staves and heading and heading blocks, and value.....				
48	All coopers material and merchandise, and value.....				
49	Number of horses, and value.....				
50	Number of mules, jacks and jennets, and value.....				
51	Number of cattle, and value.....				
52	Number of sheep, and value.....				
53	Number of hogs, and value.....				
54	Number of stands of bees, and value.....				
55	Number of cords of wood, and value.....				
56	Bushels of coal, and value.....				
57	Bushels of lime, and value.....				
58	Bushels of wheat, and value.....				
59	Bushels of corn, and value.....				
60	Bushels of rye, and value.....				
61	Bushels of oats, and value.....				
62	Bushels of potatoes, and value.....				
63	Bushels of barley, and value.....				
64	Bushels of grass and clover seed, and value.....				
65	Bushels of flaxseed, and value.....				
66	Bushels of fruit, and value.....				
67	Tons of hay, and value.....				
68	Tons of hemp, and value.....				
69	Pounds of beef, and value.....				
70	Pounds of bacon, and value.....				
71	Pounds of bulk pork, and value.....				

LAW OF TAXATION.

Number.	PERSONAL PROPERTY—CHATELERS.	Number.	Valuation by Party.	Valuation by Township Assessor.	Valuation by Assessor.
72	Pounds of lard, and value.		\$	\$	\$
73	Pounds of wool, and value.				
74	Pounds of tobacco, and value.				
75	Pounds of hops, and value.				
76	Pounds of maple sugar, and value.				
77	Barrels of beef and value.				
78	Barrels of pork, and value.				
79	Gallons of cider, and value.				
80	Gallons of vinegar, and value.				
81	Gallons of wine, and value.				
82	Gallons of sorghum and maple molasses, and value.				
83	Feet of lumber, and value.				
84	Pounds of starch, and value.				
85	Pounds of feed, and value.				
86	Reams of paper, and value.				
87	Pounds of pulp, and value.				
88	Gallons of oil of all kinds, and value.				
89	Number of scales, and value.				
90	Number of yards of cl th, and value.				
91	Number of yards of flannel, and value.				
92	Number of blankets, and value.				
93	Number of yarn, and value.				
94	Tons of ice, and value.				
95	Number of threshing machines, and value.				
96	Number of corn shellers, and value.				
97	Value of logs and timber.				
98	Value of all other property not specified above, required to be listed.				
99	Male dogs owned or harbored by me.		\$	\$	\$
100	Female dogs owned or harbored by me.				
	Grand total.		\$	\$	\$
	Age, March 1, 1901.				

TO THE ASSESSOR.

The following is a list of all persons in my family and belonging to my township who are either deaf and dumb, blind, idiotic or insane, with their names, ages and sex, and also the name of the father, mother or guardian, and their postoffice address:

[illegible]

No.	WHITE, COLORED
ASSESSMENT LIST	Personal, \$
or	Logs { Private
1902.	RESIDENCE.
No.	Where did you live last fall?
No.	1902.
Filed	Auditor.
From owned Real Estate	Int. 10-2 state Tax or No.
When Real Estate is owned by wife, give name.	
Name	
Husband's } Occupation	
HUSBAND'S PLACE OR BUSINESS.	

Deputies are required to make special inquiry for all Adult Male of family, also boarders, and secure personal judgment as to whether a list, when made, is sufficient. If not, to insist on its being corrected before accepted.

Deputies must in all cases swear parties to their lists.

INTERROGATORY 1. Are you, or were you, on the first day of March of the present year, the executor of the last will or the administrator of the estate of any deceased person, or the guardian of the estate of any infant or person of unsound mind, or the trustee of the property of any person, or the receiver of any corporation, association or firm, or the agent, attorney or banker investing, loaning or otherwise controlling the money or other property of any other person resident in this State, or the president or accounting officer of any corporation, or a partner, consignee or pawnbroker? If yes, designate for whom you were then, or are now, acting in such representative or fiduciary capacity, and if you were, or are now, acting under the authority of any particular court, name court, and also state to what court you report.

INTERROGATORY 2. Have you, before the first day of March of the present year, either personally or through the agency of others, caused all or any part of your taxable money or other property to be temporarily converted, either by sale, borrowing, exchange, or in any other manner, into bonds or other securities of the United States, not taxable, or any other property not taxable, with the intention to pay back, return or exchange or sell back such property after you have made out your tax statement, for the purpose of evading the payment of taxes on such property; or did you, on or after the first of March of the present year, and before you saw this interrogatory, pay back, return, re-exchange or sell back such property for the purpose aforesaid?

INTERROGATORY 3. If you have converted any of your property or money, or money or property of any other person, as inquired of you, then state when the same was so converted or invested, and the kind and amount and value thereof.

STATE OF INDIANA.

.....County, ss:

I, being duly sworn, say, to the best of my knowledge, information and belief, the foregoing statement contains a true, full and complete list of all property held or belonging to me, and dogs owned, kept or harbored by me, on the first day of March, including all personal property appertaining to merchandising, whether held in actual possession or only having been purchased with a view to possession or profit, and all personal property appertaining to manufacturing, and all manufactured articles, whether on hand or owned by me. In all cases where I have been unable to exhibit certain classes of property to the Assessor, such property has been fully and fairly described, and its true condition and value represented. That I have in no case sought to mislead the Assessor, as to either quantity or quality or value of property, and that the deductions claimed from credits are bona fide debts for a consideration received, and do not consist in any part in bonds, notes or obligations of any kind given to any insurance company on account of premium or policies, nor on account of any unpaid subscriptions to any literary, scientific or charitable institution or society, nor on account of any subscription to, or indebtedness payable on capital stock of any company, whether incorporated or unincorporated; and I further swear that since the first day of March of last year I have not, directly or indirectly, converted or exchanged any property temporarily for the purpose of evading the assessment thereof for taxes, into non-taxable property or securities of any kind.

I further swear that I have, to the best of my knowledge and judgment, valued said property at its true cash value, by which I mean the usual selling price, being the price which could be obtained for said property at private sale, and not at forced or auction sale.

.....
Subscribed and sworn to before me, this.....day of.....190..

....., Assessor.
By Deputy.

(As amended February 25, 1903. Acts 1903, p. 40. 4 Burns Supp., §8463.)

1. **Right to Deductions.**—Taxpayers have a right to deduct from the demands due, and owing to, them the amount of their bona fide indebtedness. *Matter v. Campbell*, 71 Ind. 512; *Florer v. Sheridan*, 137 Ind. 28; 38 N. E. Rep. 365; 23 L. R. A. 278.

2. **Recovering Back Taxes.**—If a taxpayer is improperly refused permission to deduct his indebtedness from his credits, and pays taxes thereon under protest, he can recover back such taxes. *Indianapolis v. Vajen*, 111 Ind. 240; 12 N. E. Rep. 311.

3. **Money at Interest.**—"Money at interest" means money loaned. *Wasson v. First National Bank*, 107 Ind. 206; 8 N. E. Rep. 97.

4. **Fair Cash Value.**—The taxable value of property is its fair cash value, a fair cash value being the market or selling price where the property is at the time of its liability to assessment, and if there be no market value, then it is the actual value that rules. *Willis V. Crowder*, 134 Ind. 515; 34 N. E. Rep. 315.

5. **Imperfect Assessment.**—A failure to use the dollar mark (or any other similar sign) in front of the amount of the valuation of property in the assessment sheet does not render the assessment void; and this is especially true if it can be gathered from the entire assessment that the dollar mark was intended to be used but was accidentally omitted. *Midland Ry. Co. v. State*, 11 Ind. App. 433; 38 N. E. Rep. 57.

6. **Constitutional.**—The provision of the statute allowing the deduction of debts from credits is constitutional. *Florer v. Sheridan*, 137 Ind. 28; 38 N. E. Rep. 365; 23 L. R. A. 278; *First National Bank v. Turner*, 154 Ind. 456, 466; 57 N. E. Rep. 110.

7. **Valuation by Party.**—The valuation entered in the column headed "valuation by party" on a tax schedule, is to be regarded as having been entered in the column headed "valuation by assessor." *Dubois v. Board*, 4 Ind. App. 138; 30 N. E. Rep. 206.

8. **Deducting Indebtedness from Value of Stock.**—The owner of stock in a national bank is not entitled to a deduction of his bona fide indebtedness from the assessed valuation of such stock for the purpose of taxation. *First National Bank of Richmond v. Turner*, 154 Ind. 456; 57 N. E. Rep. 110. This case necessarily overrules *Wasson v. First National Bank*, 107 Ind. 206; 8 N. E. Rep. 97; *City of Indianapolis v. Voger*, 111 Ind. 240; 12 N. E. Rep. 311.

9. **Only Notes and Accounts Can Be Deducted.**—In the schedule provision is made for deducting bona fide indebtedness due by the property owner, from indebtedness due him. The Legislature deemed it wise to allow as deductions from credits, only such indebtedness as should be covered by notes and accounts; but it was never intended to define all indebtedness as including only notes and accounts. *State Board Tax Commissioners v. Holliday et al.*, 150 Ind. 259; 49 N. E. Rep. 14; 42 L. R. A. 828.

10. **Sheriff's Certificate.**—Under the tax statute of 1891 as amended by the act of 1903 the certificate of purchase issued upon a sheriff's sale is subject to taxation during the period of redemption, though there was no redemption, and the holder of the certificate was compelled to pay the taxes against the real estate for the same period. *Miller v. Vollmer*, 153 Ind. 26; 53 N. E. Rep. 949.

11. **Tax Certificate.**—Tax certificates are taxable under the law and should be reported by the tax payer under item 5 of the schedule of personal property. *State v. Hatter*, 149 Ind. 302; 47 N. E. Rep. 605.

12. **Indictment.**—As to what is a sufficient indictment for making a false oath under the above section, see *State v. Blackstone*, 74 Ind. 592.

13. **Schedule Controls.**—The schedule set out in the above section controls in case of a conflict between its provisions and other portions of the tax law. *Wasson v. First National Bank*, 107 Ind. 212; 8 N. E. Rep. 97; *Clark v. Carter*, 40 Ind. 190; *Matter of Campbell*, 71 Ind. 512; *Evansville Bank v. Britton*, 105 U. S. 822.

14. *Owner Must Swear to.*—Under the above section, the owner of the property listed is required to swear to his assessment. *State v. Reynolds*, 108 Ind. 353; 9 N. E. Rep. 287; *Buck v. Beach*, 164 Ind. 37; 71 N. E. Rep. 968.

15. *Who May Administer Oath.*—The Assessor and his deputies have authority to administer all necessary oaths in connection with tax lists. *State v. Reynolds*, 108 Ind. 353; 9 N. E. Rep. 287.

16. *Tax List as Evidence.*—See Section 58, note 2.

17. *Listing Non-taxable Property—Change of Schedule.*—Under its power to change the schedule for listing property, the State Board of Tax Commissioners can not require the listing of property that is not taxable. *State Board of Tax Commissioners v. Holliday*, 150 Ind. 259; 49 N. E. Rep. 14; 42 L. R. A. 826.

18. *Deducting Indebtedness from Omitted Credits.*—If the owner of notes fails to list them they may be listed as omitted property; but from their amount he is entitled to deduct his indebtedness, and the fact that he has failed in his property schedule to list such notes for taxation will not deprive him of the right to claim such deduction when such notes are listed by the taxing officer. *McCrory v. O'Keefe*, 162 Ind. 534; 70 N. E. Rep. 812.

19. *Deductions from Value of Corporate Stock.*—Debts should not be subtracted from the value of corporate stock, though they should be treated as one of several factors in fixing its value. *Smith*, 1892, p. 92.

20. *Deductions, Time for Claiming.*—A taxpayer who fails to claim deductions on account of bona fide indebtedness at the time of making out his list may do so before the County Board of Review. *Smith*, 1892, p. 103.

64. Mutes—Blind—Insane—Lists—

54. It shall be the duty of the Assessor at the time of assessing property to ascertain and set down in tables prepared for that purpose, a list of all persons in their respective townships who are deaf and dumb, blind, idiotic or insane, setting forth the name, age and sex of each, also the names of the father, mother or guardian, and their postoffice address, and in addition the Assessor of the township wherein the county poorhouse is located shall set down the number of the incurably insane who are kept therein, which list they shall return to the County Auditor at the same time they return the list of property. The said County Auditor shall report the same to the Chief of the Bureau of Statistics at the time of making their returns of the list of property; and said Chief shall lay before the Superintendents of the Institute for the Education of the Blind, the Insane, Feeble-Minded and of the Deaf and Dumb copies of the lists so made. (3 Burns R. S. 1901, §8464.)

65. False Statement—Penalty—

55. If any person or corporation shall give a false or fraudulent list, schedule or statement required by this act, or shall willfully fail or refuse to deliver to the Assessor, when called on for that purpose, a list of the taxable property which he is required to list under this act, or shall temporarily convert any part of his property into property not taxable for the fraudulent purpose of preventing such property from being listed and of evading the

payment of taxes thereon, he or it shall be liable to a penalty of not less than fifty dollars nor more than five thousand dollars, to be recovered in any proper form of action in the name of the State of Indiana, on the relation of the Prosecuting Attorney. The Assessor shall forthwith notify the Prosecuting Attorney of such delinquency or offense, and he shall prosecute such offender to final judgment and execution, and such fine when collected shall be paid into the county treasury for the use of the county, and the Prosecuting Attorney shall receive ten per centum commission of all moneys so collected and paid in, and a docket fee of ten dollars, to be taxed and collected with costs in such actions. Absence from the township during the sixty days without design to avoid the listing, or sickness during such period shall be a sufficient defense to such prosecution. (3 Burns R. S. 1901, §8465.)

1. *Constitutional.*—This section is constitutional. *Burgh v. State*, 108 Ind. 132; 9 N. E. Rep. 75; *State v. Lauer*, 116 Ind. 162; 18 N. E. Rep. 527.

2. *Indictments Not Permissible.*—Persons who violate the provisions of this section must be proceeded against as herein provided, and not by indictment. *Durham v. State*, 116 Ind. 614; 19 N. E. Rep. 320; *Durham v. State*, 117 Ind. 477; 19 N. E. Rep. 327; *State v. Lauer*, 116 Ind. 162; 18 N. E. Rep. 527; *Burgh v. State*, 108 Ind. 132; 9 N. E. Rep. 75.

3. *Complaint.*—As to necessary averments in a complaint under this section, see *Burgh v. State*, 108 Ind. 132; 9 N. E. Rep. 75; *State v. Lauer*, 116 Ind. 162; 18 N. E. Rep. 527; *Davis v. State*, 119 Ind. 555; 22 N. E. Rep. 9; *Warner v. State*, 3 Ind. App. 60; 29 N. E. Rep. 173; *Swift v. State*, 3 Ind. App. 285; 29 N. E. Rep. 488; *Brand v. State*, 3 Ind. App. 469; *Durham v. State*, 6 Ind. App. 23; 32 N. E. Rep. 104; 28 N. E. Rep. 1030.

4. *Separate Action for Each Year.*—The State has a separate action for each year a taxpayer gives a false or fraudulent list, schedule or statement, or fails or refuses to deliver to the assessor a list of taxable property which he is required to list. *State v. Halter*, 149 Ind. 292; 47 N. E. Rep. 665; *La Plante v. State*, 152 N. E. Rep. 80; 52 N. E. Rep. 452.

5. *Paragraph for Each Year.*—In an action to recover penalties for failure to list property for taxation for more than one year, the cause of action for each year should be stated in a separate paragraph of complaint. *State v. Halter*, 149 Ind. 292; 47 N. E. Rep. 665.

6. *Foundation of Action.*—In an action to recover the penalty provided by the above section, for failure to list property for taxation, the alleged fraudulent tax lists are not the foundation of the action and need not be filed with the complaint. *State v. Halter*, 149 Ind. 292; 47 N. E. Rep. 665.

7. *Constitutional.*—A statute providing for the recovery of a penalty from a property owner who refuses to furnish a list for taxation, or who furnishes a false list of his property, is not unconstitutional because it provides that the penalty recovered shall be paid into the county treasury for county purposes, instead of the common school fund. *State v. Indiana, etc.*, R. R. Co., 133 Ind. 69; 32 N. E. Rep. 817; 18 L. R. A. 502.

8. *Complaint—Failure to Return List.*—A complaint which alleges that a taxpayer willfully failed and refused to deliver to the Assessor a list of his taxables, is sufficient to show that such taxpayer had a list on which to make a return, or could have obtained the same, and is sufficient in that respect. *Gilliland v. State*, 13 Ind. App. 651; 42 N. E. Rep. 238.

9. *Indictment—Withholding Money.*—One who fraudulently omits from the tax list returned by him money on deposit belonging to him, is liable to the pecuniary penalty of not less than fifty dollars nor more than five thousand dollars prescribed by the above section, which is recoverable in an action in

the name of the State, on the relation of the Prosecuting Attorney, and not by indictment. *Burgh v. State*, 108 Ind. 132; 9 N. E. Rep. 75; *State v. Lauer*, 110 Ind. 162; 18 N. E. Rep. 527; *Durham v. State*, 116 Ind. 514; 19 N. E. Rep. 329; *Durham v. State*, 117 Ind. 477; 19 N. E. Rep. 327.

10. *Criminal Prosecution*.—The offenses defined in the above section, and those defined by the next section (2271, R. S. 1901), in relation to false returns of property for taxation, are separate and distinct, the one subjecting the taxpayer to criminal prosecution and the other rendering him liable to a pecuniary penalty recoverable in a civil action. *Durham v. State*, 117 Ind. 477; 19 N. E. Rep. 327.

11. *Survival of Action*.—A cause of action to recover the penalty imposed by the section above upon any person who gives a false and fraudulent list or statement of his taxable personal property, does not die with the taxpayer, but, under Section 284, R. S. 1901, survives and may be maintained against his personal representative. *Davis v. State*, 119 Ind. 555; 22 N. E. Rep. 9.

12. *Action on Relation of Prosecuting Attorney*.—An action by the State for failure to list property for taxation is properly brought on the relation of the Prosecuting Attorney. *La Plante v. State*, 152 Ind. 80; 52 N. E. Rep. 452.

13. *Complaint—Averring Value of Property Omitted*.—A complaint in an action by the State on the relation of the Prosecuting Attorney for recovery of the penalty provided by statute for failure to list property for taxation which discloses that the omitted property consisted of money, bonds, mortgages, notes, etc., subject to taxation, is sufficient without averring the value of the particular property. *La Plante v. State*, 152 Ind. 80; 52 N. E. Rep. 452; *Swift v. State*, 3 Ind. App. 285; 29 N. E. Rep. 488; *Warner v. State*, 3 Ind. App. 60; 29 N. E. Rep. 173.

14. *Excessive Penalty*.—A penalty of \$1,500 for failure to list property for taxation is not excessive where the evidence showed that the defendant omitted from his tax list over \$20,000 worth of property held by him, subject to taxation, and converted about \$1,800 for the purpose of avoiding taxation. *La Plante v. State*, 152 Ind. 81; 52 N. E. Rep. 452.

15. *Conversion of Taxable into Non-taxable Property*.—The above section is not limited to transactions whereby taxable property is removed from the State, or whereby it is transferred to a non-resident. *Durham v. State*, 6 Ind. App. 23; 32 N. E. Rep. 104.

16. *Notice to Prosecuting Attorney*.—It is not necessary for the assessor to notify the prosecuting attorney of the offense committed under this section, in order to enable him to maintain an action. The notice is no part of the office. *State v. Lauer*, 116 Ind. 162; 18 N. E. Rep. 527.

17. *Penalty for Making False Statement*.—Any person or corporation giving a false or fraudulent statement of his property is liable to a penalty of not less than fifty nor more than five thousand dollars. *Smith*, 1892, p. 67.

18. *Refusal to Answer is an Offense and Should Be Prosecuted*.—The refusal of any person to answer interrogatories or submit for inspection books or records within his keeping should be reported to the prosecuting attorney of the circuit and an affidavit promptly filed against the offender. It thereupon becomes the duty of the prosecuting attorney to prosecute such person for the offense. *Smith*, 1892, p. 70.

[Acts 1905, p. 584. Approved March 10, 1905. In force April 15, 1905.]

66. Giving False List of Taxables—

653. Whoever, when requested by any officer or board authorized by law to assess property for taxation, fails to give a true list of all his taxable property, or to take and subscribe any oath in that behalf, as required by law, or shall fix a fraudulent value where an oath is not required on such property, shall, on conviction, be fined not less than ten dollars nor more than five hundred dollars. (4 Burns Supp. §2337.)

1. *Statute Unrepealed*.—This statute is not in conflict with Section 62 nor repealed thereby. *Durham v. State*, 117 Ind. 477; 19 N. E. Rep. 327; *Burgh v. State*, 108 Ind. 132; 9 N. E. Rep. 75.

2. *Indictment*.—An indictment charging that the defendant "being requested as required by law," failed to give a true list of his property, for taxation is sufficient to charge the offense set out in the above section without setting out the exact manner in which the request to furnish a list of taxable property was made by the assessor. *State v. Hilgendorf*, 23 Ind. App. 207; 55 N. E. Rep. 102.

3. *Indictment*.—An indictment for failure to give a true list of property for taxation must set forth such a state of facts as will show that property was subject to taxation which by law the defendant was required to list for taxation. *Loose v. State*, 72 Ind. 285; *State v. Reynolds*, 108 Ind. 353; 9 N. E. Rep. 287; *Burns v. State*, 5 Ind. App. 385; 31 N. E. Rep. 547.

4. *Oath, Statement Concerning*.—In charging a person with refusing to take an oath to a tax list, it must be shown that the oath was such a one as is authorized by law. *Buckingham v. State*, 17 Ind. 305.

[Acts 1891, p. 199. Approved and in force March 6, 1891.]

67. Assessor's Valuation—

56. In every case where any person shall refuse to make out and deliver to the proper Assessor the statement required under this act, or shall refuse to take and subscribe to any of the oaths or affirmations required by this act, the Assessor shall proceed to ascertain the number of each description of the several enumerated articles of property and the value thereof, and for this purpose he may examine on oath any person or persons whom he may suppose to have knowledge thereof, and such Assessor shall make a note of such refusal in a column opposite the person's name, and the County Auditor shall add to such valuation when returned by the Assessor fifty per centum on the value so returned. (3 Burns R. S. 1901, §846.)

1. *Presumption*.—Assessors are presumed to adopt the valuation fixed by the owner or taxpayer unless a different value is fixed. *DuBois v. Board*, 4 Ind. App. 138; 30 N. E. Rep. 206.

2. *Refusal to Make Return—Penalty*.—It is the duty of the County Auditor to add fifty per centum as penalty to the value of the property of any taxpayer who shall refuse to make and deliver to the assessor a proper schedule and statement of his property. *Smith*, 1892, p. 67.

3. *Refusal to Make Return—Penalty*.—Where persons or corporations refuse to file a sworn statement of their property, the assessor must proceed with the examination of any person or persons having a knowledge thereof, for the purpose of determining, as nearly as possible, the character and amount of such property. The assessor's valuation, thus reached, should be filed with the County Auditor, and that officer should in turn arbitrarily add to the estimate made by the assessor, fifty per centum of the value so returned. *Smith*, 1892, p. 70.

68. Penalties—

57. If any person required by the Assessor to give evidence, as provided in the preceding section, or in any case when interrogated by the Assessor as to any property, real or personal, of himself or others, shall refuse to be sworn or affirm, or if having

been sworn or affirmed, he shall refuse to answer the interrogatories hereinbefore set out, or any other questions touching the subject of inquiry, such person upon conviction thereof shall be fined in any sum not more than five hundred dollars, nor less than ten dollars, to which may be added imprisonment in the county jail not exceeding six months. (3 Burns R. S. 1901, §8467.)

1. *Refusing to Testify.*—Persons who improperly refuse to testify before the assessor are liable under this section. Burns v. State, 5 Ind. App. 385; 31 N. E. Rep. 547.

2. *Omitted Property—Appearance Before Auditor—Refusal to Answer Questions.*—Where one appears before the County Auditor to show cause why certain property should not be assessed, and refuses to answer proper questions as to the property sought to be assessed, he may be indicted by the grand jury under the above section. Ketcham, 1897, p. 107.

69. Sickness or Absence—Proceedings—

58. When any person shall have been prevented from making and verifying his statement by reason of sickness or absence from the county during the sixty days, and the Assessor shall have made a statement for him, he may at any time before the assessment of taxes thereon by the County Auditor, make, verify and file with the County Auditor the proper statement; but in such cases before the Auditor shall receive such statement the person making the same must add to the ordinary affidavit a statement to the effect that his failure to give to the Assessor such statement was occasioned by his sickness or absence, and if from absence, that such absence was without design to avoid the listing of his property, and on the filing of such statement the Auditor shall correct the statement made by the Assessor. (3 Burns R. S. 1901, §8468.)

ARTICLE 7—BANKS AND TRUST COMPANIES.

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|---|----------------------------------|
| 70. Taxation of Stock. | 74. Dividends, Retention for Tax |
| 71. Unincorporated Bank. | Payment—Treasurer. |
| 72. Bank Officers, Duties—County Auditor, Duty. | 75. Entry of Valuation. |
| 73. Failure to Report—Summons by Auditor. | 76. Tax, When Lien on Shares. |
| | 77. Municipal Taxing. |

[Acts 1907, p. 624. Approved and in force March 12, 1907.]

70. Taxation of Stock—

1. The shares of capital or capital stock of any bank, banking association or trust company located within this State, whether organized under the laws of this State or the United States, or of any other state or country, shall be assessed to the owner thereof in the township, city or town where such bank, banking association or trust company is located, and shall be taxed at the same rate as other property in the same locality is taxed and with reference to its value on the first day of March of the current year.

1. *Repeal.*—The law of 1905 for the assessment of banks (Acts 1905, p. 104) was repealed by the 6th section of this act of March 12, 1907.

2. *Decisions Under Former Law.*—For decisions under the statute relating to the assessment of banks see Eaton v. Union Natl. Bank, 141 Ind. 130; 40 N. E. Rep. 608; First Natl. Bank v. Turner, 154 Ind. 456; 57 N. E. Rep. 110.

3. *Personal Property of Banks.*—Personal property of banks and trust companies is listed and assessed in the township where it is situated. See Section 23.

4. *Indebtedness of Shareholders.*—The indebtedness of a taxpayer can not be deducted from the assessed value of shares in a national bank held by him. First National Bank v. Turner, 154 Ind. 456; 57 N. E. Rep. 110. See Board v. First National Bank, 25 Ind. App. 94; 57 N. E. Rep. 728.

5. *Shares in National Banks.*—Shares in national banks are taxable. First National Bank v. Turner, 154 Ind. 456; 57 N. E. Rep. 110. See City of Richmond v. Scott, 48 Ind. 568; Board v. Bank, 25 Ind. App. 94; 57 N. E. Rep. 728; Croph v. Tuttle, 27 Ind. 332; Wright v. Stittz, 27 Ind. 338; Strader v. Manville, 33 Ind. 111; Whitney v. Ragsdale, 33 Ind. 107; 5 Am. Rep. 185.

6. *Constitutional—Non-Resident.*—The requirement of the above section that the stock shall be taxed at the place where the bank is located, is not invalid where the owner of the stock lives in another county or State. Whitney v. Ragsdale, 33 Ind. 107. 5 Am. Rep. 185; Strader v. Manville, 33 Ind. 111.

7. *Not Taxable Where Stockholders Reside.*—Bank stock is taxable where the bank is located, and is not liable to taxation again at other places where the stockholders reside. Strader v. Manville, 33 Ind. 111.

8. *Invalid as to National Banks.*—In the case of the Indiana National Bank v. Smith, Auditor of Marion County (not reported) in 1903, the United States Circuit Court for the District of Indiana held that so much of the act of 1903 relating to the assessment of banks as assessed the shares of national banks with the capital stock owned by its stockholders was invalid, because in conflict with the provisions of Sections 5214 and 5219 of the U. S. Revised Statutes. See now §76.

9. *Reduction of Assessment on Appeal.*—If the assessment of the stock and property of a bank be reduced on appeal to the State Board of Tax Commissioners, then the amount of tax must be based on the amount as fixed by that board. First National Bank v. Gieger, 157 Ind. 479; 62 N. E. Rep. 21.

10. *Bank Incorporated After March 1st.*—Where a bank is incorporated after March 1st, its stock can not be assessed for that year. King v. City of Madison, 17 Ind. 48.

11. *Duty of Bank Officers.*—The Legislature has power to require the officers of national banks to make a list of the shares of stock of such banks for taxation. Whitney v. Ragsdale, 33 Ind. 107; 5 Am. Rep. 185.

12. *Shareholders Liable for Taxes.*—The assessment of bank stock in the name of the bank instead of the stockholders will not affect the lien for taxes, nor relieve the owner from the payment of the tax. Small v. Lawrenceburgh, 128 Ind. 231; 27 N. E. Rep. 500.

13. *Real Estate of Banks.*—Real estate owned by a national bank, by the provisions of the statutes, State and national, as construed together, should be assessed for taxation as realty in the township where situated, and not as a part of the capital stock of the bank. Lofton v. Citizens' Nat. Bank, 85 Ind. 341.

14. *State Tax Board, Increasing Valuation.*—If a County Board of Review fixes the value of stock for taxation, and no appeal is taken, the State Board of Tax Commissioners can not increase such valuation. First National Bank v. Brodhecker, 137 Ind. 693; 37 N. E. Rep. 340; Jones v. Rushville Bank, 138 Ind. 87; 37 N. E. Rep. 338; Cummings v. Stark, 138 Ind. 94; 34 N. E. Rep. 444; Eaton v. Union Bank, 141 Ind. 136; 40 N. E. Rep. 608.

15. *Double Taxation.*—To assess both the stock and the physical property of a bank is double taxation. Board v. First National Bank, 25 Ind. App. 94. 98; 57 N. E. Rep. 728.

6. *How Value of is Ascertained.*—Surplus funds and undivided profits of a banking association enter into the value of stock, and are subject to taxation. The property of a banking association is taxed according to the value of its stock; and in determining such value the taxing officer should be governed by the market or selling price of such stock. If there be no market value, he must determine the actual value, taking into consideration the surplus and undivided profits. Smith, 1892, p. 78.

7. *Bank Deposits Checked Against.*—Where property is sold on the first day of April [now March] and a check given in payment therefor, the property should be assessed for taxation to the purchaser thereof, and the check, where the money has not been drawn thereon, should be assessed to the seller as a credit, from which the holder, if indebted, might deduct his indebtedness, and such purchaser would not be entitled to deduct the amount of such check from his deposit in bank, but would be required to return the full amount thereof for taxation. Ketcham, 1897, p. 130.

71. Unincorporated Bank—

2. The shares of stock or membership shares or certificates of stock in any bank owned and operated by any individual, partnership or unincorporated association within the State of Indiana shall be assessed to the owner of such shares in accordance with the provision in Section 1 of this act.

1. *Note.*—Section 1 is section 69 of this book.

2. *Unincorporated Association.*—The rule laid down in this section does not apply to an unincorporated association not engaged in banking. Sec. 21, note 1.

72. Bank Officers—Duties—County Auditor—Duties—

3. The president, cashier or other accounting officer of any bank, banking association or trust company or individual, partnership or unincorporated association, shall between the first day of March and the twenty-fifth day of March of each year make out a statement under oath, in duplicate, showing the number of shares, certificates of capital or capital stock of such bank, banking association or trust company, or individual, partnership or unincorporated association, the name and residence of each stockholder or shareholder with the number of shares owned by such stockholder or shareholder in such bank, banking association or trust company, and shall affix what he deems the true cash value of each of said shares and also the true cash value of the entire capital or capital stock of such bank, banking association or trust company, or individual, partnership or unincorporated association on or as of the first day of March and shall deliver said statements to the auditor of the county wherein such bank, banking association, trust company, or individual, partnership or unincorporated association is located, and said county auditor upon the meeting of the county board of review shall lay such statement before said board of review, who shall thereon value and assess the capital or capital stock of such bank, banking association, or trust company, individual, partnership or unincorporated association as

provided for in this section, in all respects the same as similar property belonging to other corporations and individuals, and whenever any such bank, banking association or trust company shall have acquired real estate, the assessed value of such real estate shall be deducted from the valuation of the capital or capital stock of such bank, banking association or trust company. In making such statement of the true cash value of such shares, the credits shall be given and the bona fide indebtedness of such banks, banking associations or trust companies deducted therefrom as in case of individuals. The county board of review shall determine and settle the true cash value of each share of stock after an examination of such statement and also an examination under oath of such officer if it be deemed necessary and in determining and fixing the true cash value of each of said shares of stock, it shall take into consideration the capital, surplus, undivided and individual profits, if any, just as it would with respect to other moneyed capital in the hands of individual citizens of the State.

73. Failure to Report—Summons by Auditor—

4. In the case of the failure or the refusal of the president, cashier or other proper accounting officer of such bank, banking association or trust company or individual, partnership or unincorporated association to make and return such duplicate statements within the time aforesaid, the auditor of the proper county shall summon such officer to appear forthwith before him with the books of such bank, banking association or trust company, or individual, partnership or unincorporated association, and said auditor is hereby empowered to compel the attendance of said officers in obedience to such summons and to examine them under oath and make such investigation at the expense of such bank, banking association or trust company, or individual, partnership or unincorporated association, as may enable him to obtain the information provided for in the preceding section.

1. *Mandamus.*—If the Auditor fails to discharge his duty as required by this section, he may be compelled by mandate to do so. State v. Hamilton, 5 Ind. 310; Floyd County v. New Albany, etc., R. R. Co., 11 Ind. 570.

74. Dividends—Retention for Tax Payment—Treasurer—

5. It shall be the duty of every such bank, banking association or trust company, individual, partnership or unincorporated association, or the managing officer or officers thereof, after being notified in writing to do so by the county treasurer, to retain so much of any dividend or dividends belonging to such stockholders, as shall be necessary to pay any tax levied upon their shares of stock respectively, until it shall be made to appear to such bank, banking association or trust company, or individual, partnership

or unincorporated association who shall pay over, or authorize the paying over, of any such dividend or dividends, or any portion thereof contrary to the provisions of this section, shall thereby become liable for such tax, or the bank, banking association or trust company, or individual, partnership or unincorporated association may pay the tax due from any of its shareholders, and retain the amount thereof from any subsequent dividends.

[Acts 1891, p. 199. Approved and in force March 6, 1891.]

71. Entry of Valuation—

63. The County Auditor shall enter the valuation of such capital stock on the tax duplicate of the current year and shall compute and extend taxes thereon the same as against the valuation of other property in the same township, town, or city. (3 Burns R. S. 1901, §8473.)

73. Tax, When Lien on Shares—

64. Taxes assessed upon shares of stock of bank, banking association or trust companies shall become a lien thereon upon the first day of March of the current year, and such lien shall be in no wise affected by any sale or transfer of such stock. Such taxes shall be paid by the bank, banking association or trust company in the same manner that other individuals or corporations pay their taxes, and subject to the same penalties. (As amended February 25, 1903. Acts 1903, p. 49; 4 Burns Supp. §8474.)

1. *Liens Not Released.*—The assessment of bank stock in the name of the bank instead of the stockholders will not affect the lien for taxes, nor relieve the owner from the payment of the tax. *Small v. Lawrenceburgh*, 128 Ind. 531; 27 N. E. Rep. 500.

77. Municipal Taxing—

66. Nothing in this act shall be so construed as to exempt from taxation for municipal purposes the shares of capital stock of any bank or banking association organized under the laws of this State or the United States, but all such shares of stock may be assessed and taxed for all purposes at the same rate that other property is assessed and taxed in the same locality. (3 Burns R. S. 1901, §8476.)

1. *Bank Stocks.*—Bank stocks are taxable for municipal purposes the same as other property. *DePauw v. New Albany*, 22 Ind. 204; *City of Richmond v. Scott*, 48 Ind. 568; *Whitney v. Ragsdale*, 33 Ind. 107; 5 Am. Rep. 155.

2. *Foreign Stock.*—A city has the right to tax its citizens for stock owned by them in foreign corporations, although a tax has been paid thereon in the State where the corporations are located. *Seward v. Rising Sun*, 79 Ind. 351.

ARTICLE 3—FOREIGN CORPORATIONS.

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| 78. Insurance Companies. | 86. Manner of Assessment. |
| 79. Telegraph Companies. | 87. Value of Property Per Mile. |
| 80. Telephone Companies. | 88. Apportionment of Assessment. |
| 81. Express Companies. | 89. Duty of County Auditor. |
| 82. Sleeping Car and Freight Companies. | 90. Collection of Taxes. |
| 83. Pipe Line Companies. | 91. Repeal Proviso. |
| 84. Duty of Auditor of State. | 92. Collection of Tax From Freight Lines. |
| 85. Duty of Tax Commissioners. | 93. Bridge and Ferry Companies. |

[Acts 1891, p. 199. Approved and in force March 6, 1891.]

78. Insurance Companies—

67. Every insurance company not organized under the laws of this State and doing business therein shall in the months of January and July of each year, report to the Auditor of State under oath, of the President and Secretary the gross amount of all receipts received in the State of Indiana on account of insurance premiums for the six months last preceding, ending on the last day of December and June of each year next preceding, and shall at the time of making such report pay into the treasury of the State the sum of three dollars on every one hundred dollars of such receipts, less losses actually paid within the State, and any such insurance company failing or refusing for more than thirty days, to render an accurate [account] of its premium receipts as above provided and pay the required tax thereon shall forfeit one hundred dollars for each additional day such report and payment shall be delayed, to be recovered in an action in the name of the State of Indiana on the relation of the Auditor of State in any court of competent jurisdiction, and it shall be the duty of the Auditor of State to revoke all authority of any such defaulting company to do business within this State. (3 Burns R. S. 1901, §8477.)

1. *Repealed Sections.*—Sections 68, 69 and 70 of the original numbers of this statute have been repealed. See Section 91 for repealing clause.

[Acts 1893, p. 374. Approved and in force March 6, 1893.]

79. Telegraph Companies—

Any joint stock association, company, copartnership or corporation, whether incorporated under the laws of this State or of any other State, or of any foreign nation, engaged in transmitting to, from, through, in or across the State of Indiana, telegraphic messages shall be deemed and held to be a telegraph company, and every such telegraph company shall, annually, between the first day of April and the first day of June, make out and deliver to the Auditor of State a statement verified by the oath of the officer or agent of such company making such

statement with reference to the first day of April next preceding, showing:

First. The total capital stock of such association, company, copartnership or corporation.

Second. The number of shares of capital stock issued and outstanding, and the par or face value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the first day of April next preceding, and if such shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation and subject to local taxation within the State, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

Sixth. The specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation, situate outside the State of Indiana and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any of its property, together with the dates and amounts thereof.

Eighth. (a). The total length of the lines of said association or company.

(b). The total length of so much of their lines as is outside the State of Indiana.

(c). The length of the lines within each of the counties and townships within the State of Indiana. (3 Burns R. S. 1901, §8478.)

1. *Constitutional—Construction.*—This section is constitutional, and is to be construed in connection with and as a part of the original tax law. *Western U. Tel. Co. v. Taggart*, 141 Ind. 281; 40 N. E. Rep. 1051; *Western U. Tel. Co. v. Taggart*, 163 U. S. 1; 16 Sup. Ct. Rep. 1054; *Western U. Tel. Co. v. Henderson*, 68 Fed. Rep. 580; *Western U. Tel. Co. v. State*, 146 Ind. 54; 44 N. E. Rep. 793; *Western U. Tel. Co. v. Massachusetts*, 125 U. S. 530; *Massachusetts v. Western U. Tel. Co.*, 141 U. S. 40.

80. Telephone Companies—

2. Every telephone company doing business in this State, whether incorporated under the laws of this State or of any other State, or of any foreign nation, shall, annually, between the first day of April and the first day of June, make out and deliver to the Auditor of State a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the first day of April next preceding, showing:

First. The total capital stock of such association, company, copartnership or corporation.

Second. The number of shares of capital stock issued and outstanding, and the par or face value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the first day of April next preceding, and if such shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation and subject to local taxation within the State, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

Sixth. The specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation, situate outside the State of Indiana and not used directly in the conduct of the business, with a specific description of each piece, where located, the purpose for which the same is used and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any of its property, together with the dates and amounts thereof.

Eighth. (a). The total length of the lines of said association or company.

(b). The total length of so much of their lines as is outside the State of Indiana.

(c). The length of the lines within each of the counties and townships within the State of Indiana. (3 Burns R. S. 1901, §8479.)

81. Express Companies—

3. Every joint stock association, company, copartnership or corporation incorporated or acting under the laws of this or any other State, or any foreign nation engaged in conveying to, from, through, in or across this State, or any part thereof, money packages, gold, silver plate, merchandise, freight or other articles, under any contract, express or implied, with any railroad company, or the managers, lessees, agents or receivers thereof, provided such joint stock association, company, copartnership or corporation is not a railroad company, shall be deemed and held to be an express company within the meaning of this act, and every such express company shall, annually, between the first day of April and the first day of June, make out and deliver to the Auditor of State a statement, verified by the oath of the officer or agent of such association, company, copartnership or corporation making

such statement with reference to the first day of April next preceding, showing:

First. The total capital stock or capital of said association, company, copartnership or corporation.

Second. The number of shares of capital stock issued and outstanding, and the par or face value of each share, and in case no shares of capital stock are issued, in what manner the capital thereof is divided, and in what manner such holdings are evidenced.

Third. Its principal place of business.

Fourth. The market value of the said shares of stock on the first day of April next preceding, and if such shares have no market value, then the actual value thereof. And, in case no shares of stock have been issued, state the market value, or the actual value, in case there is no market value, of the capital thereof and the manner in which the same is divided.

Fifth. The real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation within the State of Indiana, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

Sixth. The specific real estate, together with the improvements thereon, owned by said association, company, copartnership or corporation situate outside the State of Indiana, and not used directly in the conduct of the business, with a specific description of each piece, where located, the purpose for which the same is used and the sum at which the same is assessed for taxation in the locality.

Seventh. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

Eighth. (a). The total length of the lines or routes over which such association, company, copartnership or corporation transports such merchandise, freight or express matter.

(b). The total length of such lines or routes as are outside the State of Indiana.

(c). The length of such lines or routes within each of the counties and townships within the State of Indiana. (3 Burns I. S. 1901, §8480.)

1. *Information*.—In the assessment of Express Companies for taxation the State Board of Tax Commissioners is not confined for information to the statements furnished by such companies pursuant to the statute, but resort may be had to other means of information. *State v. Adams Ex. Co.*, 144 Ind. 549; 43 N. E. Rep. 483.

2. *Constitutional*.—This section is constitutional. *Adams Express Co. v. Ohio State Auditor*, 165 U. S. 194; S. C. 166, U. S. 185; *State v. Jones*, 51 Ohio St. 492; 37 N. E. Rep. 945; *American Express Co. v. Indiana*, 165 U. S. 235 (affirming 144 Ind. 589; 42 N. E. Rep. 483); *Adams Express Co. v. Kentucky*, 166 U. S. 171.

3. *Assessment According to Mileage*.—An assessment upon an express company of another State proportioned to mileage is bad when it appears that the total valuation is made up principally from real and personal property, not necessarily used in the actual business of the company, and which is permanently located in the State where the company is incorporated. *Pargo v. Hart*, 163 U. S. 494.

4. *Unit System of Valuation*.—The State Board of Tax Commissioners may use the unit system of valuation, and in so doing the length of the route and the proportion of such length within the State may be taken into consideration. *State v. Adams Express Co.*, 144 Ind. 549; 42 N. E. Rep. 483.

82. Sleeping and Freight Car Companies—

4. Every joint stock association, company, copartnership, or association incorporated or acting under the laws of this or any other State, or of any foreign nation, and conveying to, from, through, in or across this State or any part thereof passengers or travelers, or freight in palace cars, drawing-room cars, sleeping cars, dining cars or chair cars, oil cars, refrigerator cars, fast freight cars or cars for the transportation of horses, cattle, hogs, sheep, or any other kind of freight whatever, under any contract, express or implied, with any railroad company or the managers, lessees, agents or receivers thereof, shall be deemed and held to be a sleeping car company, for the purposes of this act; and every such sleeping car company doing business in this State shall annually, between the first day of April and the first day of June, make out and deliver to the Auditor of State a statement, verified by the oath of the officer or agent of such company making such statement, with reference to the first day of April next preceding, showing:

First. The total capital stock of such association, company, copartnership or corporation.

Second. The number of shares of capital stock issued and outstanding, and the par or face value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the first day of April next preceding, and if such shares have no market value then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation within the State, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

Sixth. The specified real estate together with the permanent improvements thereon owned by such association, company, copartnership or corporation situate outside the State of Indiana and not used directly in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages and where recorded and the names and residences of the holders of the same upon the whole or any of its property, together with the franchises and amounts thereof.

Eighth. (a). The total length of the main lines of all the railroad companies over which said cars are run; (b) the total length of so much of the main lines of the railroad companies over which said cars are run as is outside the State of Indiana; (c) the length of the lines of said railroad companies over which said cars are run within each of the counties and townships within the State of Indiana; Provided, That where the railroads over which said lines run have double tracks, or a greater number of tracks than a single track, the statement shall only give the mileage as though such tracks were but a single track; and in case the Auditor of State shall require it, such statement shall show the number of miles of each or any particular railroad system or division in detail. (As amended March 4, 1901. Acts 1901, p. 87.) (3 Burns R. S. 1901, §8481.)

Tax on Earnings.—The State can not levy a tax upon the earnings of a sleeping car company engaged in the business of transporting business from one State to another, in the proportion that the distance traveled through this State bears to the entire distance for which fares are received. *State v. Woodruff Sleeping, etc., Co.*, 114 Ind. 155; 15 N. E. Rep. 814.

2. *Constitutional.*—See *Pullman's Palace Car Co. v. Pennsylvania*, 141 U. S. 18.

83. Pipe-Line Companies—

4½. Every joint stock association, company, copartnership, or association, whether incorporated under the laws of this State, or of any other State, or of any foreign nation, which owns a pipe line or lines not wholly situate in any one county in the State of Indiana, whether such pipe lines be used for the transmission of oil, natural or artificial gas, whether the same is for illuminating or fuel purposes, or for any other purpose, or steam for heat or power, or for the transmission of power, or for the transmission of articles by pneumatic or other power, shall be deemed and held to be a pipe line company, and every such pipe line company shall annually, between the first day of April and the first day of June, make out and deliver to the Auditor of State a statement, verified by the officer or agent of such company making such statement with reference to the first day of April next preceeding, showing:

First. The total capital stock or shares of such association, company, copartnership or corporation.

Second. The number of shares of capital stock issued and outstanding and the par or face value of each share.

Third. Its principal place of business.

Fourth. The market value of said shares of stock on the

first day of April next preceeding, and if such shares have no market value, then the actual value thereof.

Fifth. The real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation within the State, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

Sixth. The specific real estate, together with the permanent improvement thereon, owned by said association, company, copartnership or corporation situate outside the State of Indiana, and not directly used in the conduct of the business, with specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages and where recorded and the names and residences of holders of the same upon the whole or any part of its property, together with the debts and amounts thereof.

Eighth. A schedule of all other property owned by said associations, companies, copartnerships or corporations other than real estate, located without the State of Indiana, and the assessed value thereof, if any; also a schedule of all other property, including the length, size and value of lines, tanks and capacities thereof, and all other property owned by said associations, companies, copartnerships or corporations, other than real estate, as set out in clause fifth of this section, located within the State of Indiana, with the location and value thereof. (As amended March 4, 1901. Acts 1901, p. 87.) (3 Burns R. S. 1901, §8481a.)

1. *Assessment by Local Assessors.*—Local assessors under this section should assess all real estate, the buildings on such real estate, and the machinery and appliances, which include power houses, engines and pumping stations and the machinery therein. All wells, both gas and oil, including the derricks thereat, as well as all pipe-lines and tanks, should be assessed by the State Board of Tax Commissioners and not by local assessors. *Taylor*, 1902, p. 110.

[Acts 1893, p. 76. Approved and in force March 6, 1893.]

84. Duty of Auditor of State—

5. Upon the filing of such statements the Auditor of State shall examine them, and each of them, and if he shall deem the same insufficient, or in case he shall deem that other information is requisite, he shall require such officer to make such other and further statements as said Auditor of State may call for. In case of the failure or refusal of any association, company, copartnership or corporation to make out and deliver to the Auditor of State any statement or statements required by this act, such association, company, copartnership or corporation shall forfeit and pay to the State of Indiana one hundred (\$100) dollars for each additional day such report is delayed beyond the first day of June, to be

sued and recovered in any proper form of action, in the name of the State of Indiana, on the relation of the Auditor of State, and such penalty, when collected, shall be paid into the general fund of the State. (3 Burns R. S. 1901, §8482.)

85. Duty of Tax Commissioners—

6. Upon the meeting of the State Board of Tax Commissioners for the purpose of assessing railroad and other property, said Auditor of State shall lay such statements, with such information as may have been furnished him, before said Board of Tax Commissioners, who shall thereon value and assess the property of each association, company, copartnership or corporation in the manner hereinafter set forth, after examining such statements and after ascertaining the value of such properties therefrom, and from such other information as they may have or obtain. For that purpose they may require the agents or officers of said association, company, copartnership or corporation to appear before them with such books, papers or statements as they may require, or they may require additional statements to be made to them, and may compel the attendance of witnesses in case they shall deem it necessary to enable them to ascertain the true cash value of such property. (3 Burns R. S. 1901, §8483.)

1. *Information.*—The State Board of Tax Commissioners is not confined to the statements made by corporations for purposes of taxation, but may seek other sources of information. *State v. Adams Express Co.*, 144 Ind. 549; 42 N. E. Rep. 483.

86. Manner of Assessment—

7. Said State Board of Tax Commissioners shall first ascertain the true cash value of the entire property owned by said association, company, copartnership or corporation from said statements, or otherwise, for that purpose taking the aggregate value of all the shares of capital stock in case such shares have a market value, and in case they have none, taking the actual value thereof, or the capital of said association, company, copartnership or corporation in whatever manner the same is divided in case no shares of capital stock have been issued: *Provided, however*, That in case the whole or any part of the property of such association, company, copartnership or corporation shall be encumbered by a mortgage or mortgages, such board shall ascertain the true cash value of such property by adding to the market value of the aggregate shares of stock, or to the value of the capital, in case there shall be no such shares, the aggregate amounts of such mortgage or mortgages, and the result shall be deemed and treated as the true cash value of the property of such corporation. Such Board of Tax Commissioners shall, for the purpose of ascertaining the true cash value of the property within the State of Indiana, next ascertain

from such statements, or otherwise, the assessed value for taxation in the localities where the same is situated, of the several pieces of real estate situate without the State of Indiana, and not specifically used in the general business of such association, company, copartnership or corporation; which said assessed values for taxation shall be by said board deducted from the gross value of the property, as above ascertained. Said State Board of Tax Commissioners shall next ascertain and assess the true cash value of the property of such associations, companies, copartnerships, corporations or persons within the State of Indiana, by taking the proportion of the whole aggregate value of said associations, companies, copartnerships, corporations or person, as above ascertained, after deducting the assessed value of such real estate without the State, which the length of lines of said associations, companies, copartnerships, corporations or person in the case of telegraph and telephone companies within the State bears to the total length of lines thereof, and in the case of palace, drawing-room, sleeping, dining, chair car, oil car, refrigerator car companies, and companies owning cars for the transmission of fast freight, horses, cattle, hogs, sheep, or any other freight of any description, the proportion shall be the proportion of such aggregate value of such deductions, which the length of lines within the State over which said cars are run bears to the length of the whole lines over which said cars are run, and in case of express companies the proportion shall be in the proportion of the whole aggregate value after such deductions, which the length of lines or routes within the State of Indiana bears to the whole length of the lines or routes of such associations, companies, copartnerships or corporations, and in the case of pipe line companies the proportion shall be that proportion of the whole aggregate length, size and value of its pipe lines and other property, after such deductions, which the length, size and value of the said pipe lines and other property within the State of Indiana bears to the whole length, size and value of the said line and other property of such association, and such amount so ascertained shall be deemed and held as the entire value of the property of said associations, companies, copartnerships or corporations within the State of Indiana. From the entire value of the property within the State so ascertained there shall be deducted by the said board the assessed value for taxation of all the real estate, structures, machinery and appliances within the State and subject to local taxation in the counties and townships, as hereinbefore described in item No. 5 of sections 1, 2, 3, 4, and 4½ of this act, and the residue of such value so ascertained, after deducting therefrom the assessed value of such local properties, shall be by said board assessed to said association.

The State Board of Tax Commissioners, in the case of pipe

line associations, companies, copartnerships or corporations, shall distribute and apportion to the different counties, townships, cities or towns such residue, in the proportion that the length, size and value of the lines in each of said counties, townships, cities or towns, bears to the total assessed value in the State. (As amended March 4, 1901. Acts 1901, p. 87.) (3 Burns R. S. 1901, §8484.)

1. *Presumption.*—The presumption is that the State Board of Tax Commissioners in fixing the value of so much of a telegraph line as was within this State, deducted from the total value of all interstate property such values of extra State property, if any, as left the remaining property, within and without this State, as near as may be, of equal proportional value. *Western U. Tel. Co. v. Taggart*, 141 Ind. 281; 40 N. E. Rep. 1051.

2. *Freud in Valuation.*—The judgment of the State Board of Tax Commissioners can not be set aside by the testimony of witnesses that the valuation was other than that fixed by the board, where there is no evidence of fraud or of gross error in the system on which valuations are made. *Pittsburgh, etc., Ry. Co. v. Backus*, 154 U. S. 421, affirming 133 Ind. 625; 33 N. E. Rep. 432.

§7. Valuation of Property Per Mile—

8. Said State Board of Tax Commissioners shall thereupon ascertain the value per mile of the property within the State by dividing the total value, as above ascertained, after deducting the specific properties, locally assessed within the State, by the number of miles within the State, and the result shall be deemed and held as the value per mile, of the property of such association, company, copartnership or corporation within the State of Indiana. (3 Burns R. S. 1901, §8485.)

§8. Apportionment of Assessment—

9. Said State Board of Tax Commissioners shall thereupon, for the purpose of determining what amount shall be assessed by it to said association, company, copartnership or corporation in each county in the State through, across, into or over which the line of said association, company, copartnership or corporation extends, multiply the value per mile, as above ascertained by the number of miles in each such counties, as reported in said statements or as otherwise ascertained, and the result thereof shall be, by said Board, certified to the Auditor of State, who shall thereupon certify the same to the Auditors, respectively, of the several counties through, into, over or across which the lines or routes of said association, company, copartnership or corporation extend, and such Auditors shall apportion the amount certified for their counties, respectively, among the several townships into, through, over or across which such lines or routes extend, in proportion to the length of the lines in such townships. (3 Burns R. S. 1901, §8486.)

1. *Injunction.*—The transmission of the assessment by the State Auditor to the Auditors of the several counties may be enjoined when the assessment is not authorized by law. *Fargo v. Hart*, 193 U. S. 400.

§9. Duty of County Auditors—

10. To enable said County Auditors to properly apportion the assessments between the several townships, they are authorized to require the agent of said association or company to report to them, respectively, under oath, the length of the lines in each township, and the Auditor shall thereupon add to the value, so apportioned, the assessed valuation of the real estate, structures, machinery, fixtures and appliances situated in any township and extend the taxes thereon upon the duplicates as in other cases. (3 Burns R. S. 1901, §8487.)

§9. Collection of Taxes—

11. In case any such association, copartnership or corporation, as named in this supplemental and amendatory act, shall fail or refuse to pay any taxes assessed against it in any county or township in the State, in addition to other remedies provided by law for the collection of taxes, an action may be prosecuted in the name of the State of Indiana by the Prosecuting Attorneys of the different judicial circuits of the State on the relation of the Auditors of the different counties of the State, and the judgment in said action shall include a penalty of fifty per cent. of the amount of taxes so assessed and unpaid, together with reasonable attorney's fees for the prosecution of such action, which action may be prosecuted in any county into, through, over or across which the line or route of any such association, copartnership, company or corporation shall extend, or in any county where such association, company, copartnership or corporation shall have an office or agent for the transaction of business. In case such association, company, copartnership or corporation shall have refused to pay the whole of the taxes assessed against the same by said State Board of Tax Commissioners, or in case such association, company, copartnership or corporation shall have refused to pay the taxes, or any portion thereof, assessed to it in any particular county or counties, township or townships, such action may include the whole or any portion of the taxes so unpaid in any county or counties, township or townships, but the Attorney-General may, at his option, unite in one action the entire amount of the tax due, or may bring separate actions in each separate county or township, or join counties and townships, as he may prefer.

All collections of taxes for or on account of any particular county made in any such suit or suits shall be, by said Auditor of State, accounted for as a credit to the respective counties for or on account of which such collections were made by said Auditor of State at the next ensuing settlement with such county, but the penalty so collected shall be credited to the general fund of the State; and upon such settlement being made the Treasurers of the

several counties shall, at their next settlements enter credits upon the proper duplicates in their officers [offices], and at the next settlement with such county report the amount so received by him in his settlement with the State, and proper entries shall be made with reference thereto: *Provided, however,* That in any such action the amount of the assessment fixed by said State Board of Tax Commissioners and apportioned to such county, or apportioned by County Auditor to any particular township, shall not be controverted. (3 Burns R. S. 1901, §8488.)

1. *Constitutional*.—This section is constitutional. Western U. Tel. Co. v. State, 146 Ind. 54; 44 N. E. Rep. 793.

2. *Suit by Attorney-General*.—The Attorney-General of the State may bring an action under this section to collect the taxes and penalty due thereunder. Western U. Tel. Co. v. State, 146 Ind. 54; 44 N. E. Rep. 793.

3. *Injunction*.—An injunction restraining County Auditors and County Treasurers from collecting taxes assessed against a telegraph company, does not prevent an action to recover the same in the name of the State, under the above section. Western U. Tel. Co. v. State, 146 Ind. 54; 44 N. E. Rep. 793.

4. *Penalty*.—The penalty recoverable is fifty per cent. of the amount of the taxes due. Western U. Tel. Co. v. State, 147 Ind. 274; 45 N. E. Rep. 473.

5. *Attorneys Fees*.—After suit brought the right of the State can not be defeated by a tender of the amount of taxes due, with fifty per cent. penalty and costs of suit. Western U. Tel. Co. v. State, 147 Ind. 274; 45 N. E. Rep. 473.

§1. Repeal—Proviso—

12. Inasmuch as the provisions of this act are intended to make the place of sections 68, 69, 70 and 71 of the act entitled "An act concerning taxation, repealing all laws in conflict therewith and declaring an emergency," approved March 6, 1891, such sections and each of them, and all other laws and parts of laws in conflict with this act are hereby repealed: *Provided,* That all moneys now due the State, or which may become due on the first day of April, 1893, or at any other time, on account of any assessment or charge made against any of the joint stock associations, persons, companies or corporations on account of per cents. on gross or net earnings for the preceding year or years, and all penalties and charges thereon, growing out of any failure to make reports or payments, as now required by the provisions of the aforesaid repealed sections, shall be paid and collected under the provisions of said repealed sections, the same as if said sections were not repealed, and any suit brought for the recovery of such money, taxes or penalties, shall be begun under the provisions of said repealed sections and prosecuted to final judgment hereunder, in all respects the same as if said sections were continued in full force; and it is hereby expressly provided that all the rights of the State accrued, or which may accrue, on the first day of April, 1893, on account of receipts for the preceding years are hereby saved from the operation of the aforesaid repealing clause. (3 Burns R. S. 1901, §8489.)

[Acts 1903, p. 82. Approved February 25, 1903. In force April 23, 1903.]

§2. Collection of Tax From Freight Lines—

1. In lieu of the method heretofore provided by law for the taxation of joint stock associations, companies, copartnerships or associations engaged in carrying or transporting freight in oil cars, refrigerator cars, fast freight cars or cars for the transportation of cattle, hogs, sheep, or any other kind of freight whatever, under any contract, express or implied, with any railroad company, the said Board of Tax Commissioners shall, after ascertaining the true cash value of the property owned by such association, company, copartnership or corporation in the State of Indiana as provided by law, report to the Auditor of State the amount fixed by it as the value of the capital stock, representing the capital and property of such association, company, copartnership or corporation employed and used in the State of Indiana, whereupon it shall be the duty of the Auditor of State, in the month of November annually, to charge and collect from each of such associations, companies, copartnerships or corporations doing business or owning cars which are operated in the State of Indiana, a sum in the nature of an excise tax, to be computed by taking one per cent. of the amount fixed by the State Board of Tax Commissioners as the value of the proportion of the capital stock representing the capital and property of such company owned and used in the State of Indiana and certified to the Auditor of State after deducting the value of the real estate of the company in Indiana assessed and taxed locally, if any there be. The taxes collected by the Auditor of State under the provisions of this act shall be paid into the State treasury, and be credited to the general revenue fund. If any such company, association, copartnership or corporation fails or refuses to pay said tax during the month of November in any year, the Auditor of State shall forthwith add to the tax due a penalty of fifty per centum thereon; and it shall be the duty of the Attorney-General, on request of the Auditor of State, to prosecute any proceedings for the collections of such tax, which officer shall be allowed for his services the penalty hereinabove provided. The tax collected shall be paid into the State treasury. Suit for the collection of such taxes and penalty may be brought in the name of the State in any county in the State through which passes any railroad or through transportation line over which the cars of any such association, company, copartnership or corporation are running, and service of summons against such association, company, copartnership or corporation may be made upon any officer or agent of said company found within the State of Indiana; or if such officer or agent can not be found, then upon any conductor or officer, agent or employee of such company in charge of

any car owned and used by such company in any county in this State in which any transportation line over which the cars of such company are running is located or through which it passes. (4 Burns Supp., §8481b.)

1. *Freight Lines*.—This section relates only to companies, associations or copartnerships operating freight lines.

[Acts 1891, p. 199. Approved and in force March 6, 1891.]

93. Bridge and Ferry Companies—

72. Every bridge company and ferry company not organized under the laws of this State, and doing business therein, shall between the first day of March and the fifteenth day of May, of each year, report to the proper Assessor of the county in which any part of the business of such company is carried on, under the oath of the agent or superintendent of such company doing business in said county, the gross amount of all moneys received by such agent or superintendent on account of such company, and for the year then next preceding the first day of March of the current year, and failing or refusing to do so, such company shall forfeit and pay one hundred dollars for each additional day such report is delayed beyond the fifteenth of May, to be sued for and recovered as in the case of express, telegraph, and telephone companies: *Provided*, Such report shall also contain a list of the tangible property of such company or corporation within the county, and the true cash value thereof. The amount of such gross receipts shall be reported by such Assessor to the County Auditor and shall be by such Auditor entered, together with the true cash value of such tangible property, upon the tax duplicate of the proper county, and the taxes so assessed shall be a lien upon the property of such companies until the same are paid. (As amended February 25, 1903. Acts 1903, p. 49; 4 Burns 1901, §8490.)

ARTICLE 9—DOMESTIC CORPORATIONS.

94. Sworn Statement.
95. Schedule.

96. Failure—Duty of Auditor of State.

[Acts 1891, p. 199. Approved and in force March 6, 1891.]

94. Sworn Statement—

73. Every street railroad, water works, gas, manufacturing, mining, gravel road, plank road, saving[s] bank, insurance and other associations incorporated under the laws of this State (other than railroad companies and those heretofore specifically designated) shall, by its president or other proper accounting officer, between the first day of March and the fifteenth day of May of the current year, in addition to the other property required by this act to be listed, make out and deliver to the Assessor a sworn statement of the amount of its capital stock, setting forth particularly:

First. The name and location of the company or association.

Second. The amount of capital stock authorized, and the number of shares in which such capital stock is divided.

Third. The amount of capital stock paid up.

Fourth. The market value, or if no market value, then the actual value of the shares of stock.

Fifth. The total amount of indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

Sixth. The value of all tangible property.

Seventh. The difference in value between all tangible property and the capital stock.

Eighth. The name and value of each franchise or privilege owned or enjoyed by such corporation.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the Auditor of State. In case of the failure or refusal to make report, such corporations shall forfeit and pay one hundred dollars for each additional day such report is delayed beyond the fifteenth day of May, to be sued and recovered in any proper form of action in the name of the State of Indiana, on the relation of the Prosecuting Attorney, such penalty, when collected, to be paid into the county treasury. And such Prosecuting Attorney in every case of conviction shall be allowed a docket fee of ten dollars to be taxed as costs in such action. (As amended February 25, 1903. Acts 1903, p. 49; 4 Burns Supp., §8491.)

1. *Failure of County Board to Assess—County Assessor*.—When a private corporation had, in good faith, made out and delivered to the proper Township Assessor a verified schedule of its property, as provided by the above section, the failure thereafter of the County Board of Review to make an assessment for taxes against the property, it was held did not preclude the County Assessor from listing for taxation the property of such corporation. *Hunter Stone Co. v. Woodard*, 152 Ind. 475; 53 N. E. Rep. 947.

95. Schedule—

74. Such statements shall be scheduled by the assessor, and such schedule with the statement so scheduled, shall be returned by the Assessor to the County Auditor. The Auditor shall annually, on the meeting of the County Board of Review lay before said board the schedule and statements herein required to be returned to him and said board shall value and assess the capital stock and all franchises and privileges of such companies or associations in the manner provided in this act, and the said Auditor shall compute and extend the taxes for all purposes on the respective amounts so assessed, the same as may be levied on other property in such towns, cities or other localities in which such companies or associations are located. In all cases where the capital stock of any such corporation exceeds in value that of the tangible prop-

erty listed for taxation, then such capital stock shall be subject to taxation upon such excess of value; where no tangible property is returned or found, and the capital stock has a value, it shall be assessed for its true cash value. But where the capital stock or any part thereof is invested in tangible property, returned for taxation, such capital stock shall not be assessed to the extent that it is so invested. Every franchise or privilege of any such corporation shall likewise be assessed at its true cash value. Where the full value of any franchise is represented by the capital stock listed for taxation then such franchise shall not itself be taxed; but in all cases where the franchise is of greater value than the capital stock, then the franchise shall be assessed at its full cash value, and the capital stock in such case shall not be assessed. (3 Burns R. S. 1901, §8492.)

1. *Assessing Tangible Property.*—When the tangible property of a corporation exceeds in value the capital stock thereof, the latter is not taxable, but if the capital stock exceeds in value the tangible property, the excess in value of such stock is taxable. *Hyland v. Brazil Co.*, 128 Ind. 335; 26 N. E. Rep. 672; *Hyland v. Central Co.*, 129 Ind. 68; 28 N. E. Rep. 308; 13 L. R. A. 515.

2. *Notice.*—No special notice need be given of the time and place of meetings of Tax Boards to assess the property of corporations when the law fixes the time and place of meeting. *Hyland v. Brazil Co.*, 128 Ind. 335; 26 N. E. Rep. 672; *Hyland v. Central Co.*, 129 Ind. 68; 28 N. E. Rep. 308; 13 L. R. A. 515; *Smith v. Rude*, 131 Ind. 150; 30 N. E. Rep. 947.

3. *When Stock Assessed.*—A County Board of Review is required to assess the capital stock of domestic corporations for taxation when such stock exceeds the value of the tangible property of the corporation, and the determination of such value is a question for such board, and if it makes a mistake, the assessment is not thereby rendered void and subject to a collateral attack. *Jones v. Rushville Nat. Gas Co.*, 133 Ind. 305; 33 N. E. Rep. 390.

4. *Notice.*—This section provides that "the Auditor shall annually, on the meeting of the County Board of Review, lay before said board the schedule and statement" required to be made and delivered to the Assessor by corporations, and that the "board shall value and assess the capital stock." Held, that this is sufficient notice to the corporation that its capital stock will be valued. The act of March 9, 1889, does not apply to such a case. *Kuntz v. Sumption*, 117 Ind. 1; 10 N. E. Rep. 474; 2 L. R. A. 355; distinguished, *Smith v. Rude Bros., etc., Co.*, 131 Ind. 150, 153; 30 N. E. Rep. 947.

5. *Failure of County Board to Assess—County Assessor.*—When a private corporation has, in good faith, made out and delivered to the proper Township Assessor a verified schedule of its property, as provided by Section 73 of the general tax law [Sec. 92 of this edition], the failure thereafter of the County Board of Review to make an assessment for taxes against the property, does not preclude the County Assessor from listing for taxation the property of such corporation.

So careful is the State to guard against loss to its revenues from the remission of those officers that four different officers are each commanded to look after the State's continuing claim for taxes from property omitted from assessment in any year or number of years from any cause. Nothing will discharge the State's claim but actual payment, and the general law must be liberally construed in aid of the taxing power. *Hunter Stone Co. v. Woodard*, 152 Ind. 474; 53 N. E. Rep. 947.

6. *Assessment of Franchise.*—While the capital stock of a corporation and the value of every franchise must be included in the statement furnished the Assessors, and every franchise must be assessed, a franchise so reported is not to be taxed separately if its value be represented by the capital stock listed;

but if the value of the franchise be not represented by the capital stock listed, and be not greater than the capital stock, it is to be assessed separately from the capital stock. *Parkinson v. Jasper County Tel. Co.*, 31 Ind. App. 135, 140; 67 N. E. Rep. 471.

7. *Manufacturing and Mining Property—How to Ascertain Value Of.*—It is the duty of the State Board of Tax Commissioners in an appeal from the Board of Review of the county relative to the taxation of a corporation organized under the manufacturing and mining laws of the State to ascertain the value of the intangible property of the company and of the capital stock in excess of the value of the tangible property, and thereupon assess to such company, when so ascertained, of the tangible property only in the event that it shall exceed the value of the capital stock, and of the capital stock in addition in the event that it shall appear that it has a value in excess of the value of the tangible property, and certify such assessment to the Auditor of State, to be by him certified to the County Auditor. *Ketcham*, 1897, p. 132.

96. Failure—Duty of Auditor of State—

75. In case of the failure or refusal of the person or persons, joint stock associations, companies or corporations, their officers, agents or employees specified in the preceding section to make and return the statements and reports therein provided for the Auditor of State shall make out such returns, statements and valuations from the best information he can obtain, and for that purpose he shall have power to summon and examine under oath any person whom he may believe to have a knowledge thereof. And he shall add to such valuation twenty-five per centum thereon. (3 Burns R. S. 1901, §8493.)

ARTICLE 10—RAILROADS.

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| 97. Time of Listing. | 105. Auditor's Return to Assessor. |
| 98. Sworn Statement. | 106. Sworn Statement. |
| 99. Railroad Track. | 107. Penalty for Neglect. |
| 100. Value, How Apportioned. | 108. Report to State Board of Tax Commissioners. |
| 101. Rolling Stock. | 109. Valuations Entered. |
| 102. Other Personality. | 110. Street Railroads Included. |
| 103. Other Realty. | |
| 104. Inventory by Company. | |

[Acts 1891, p. 199. Approved and in force March 6, 1891.]

97. Time of Listing—

76. Every person, company, or corporation owning, managing, operating or constructing a railroad in this State shall cause all taxable property, not including property specifically taxed, to be listed, with reference to its amount, kind and value, on the first day of March of the year in which it is listed. (As amended February 25, 1903. Acts 1903, p. 49; 4 Burns Supp., §8494.)

1. *Railroad in Two or More States.*—When a railroad runs into or through two or more States, its value for taxation purposes in each is fairly estimated by taking that part of the value of the entire road which is measured by the proportion of the length of the particular part in that State to that of the whole road. *Pittsburgh, Cincinnati, Chicago & St. Louis Ry. v. Backus*, 154 U.

S. Rep. 421; affirming same case 133 Ind. 625; 33 N. E. Rep. 432; Cleveland, etc., Ry. Co. v. Backus, 133 Ind. 513; 33 N. E. Rep. 421; 18 L. R. A. 729; affirmed 154 U. S. 439; 14 Sup. Ct. Rep. 1122.

2. *Decision Affirmed.*—The decision of the Supreme Court of the State, upholding the act of 1891, regarding the assessment of property, and especially that part relating to the assessment of railroad property, was sustained by the Supreme Court of the U. S. under date of May 26, 1894. Pittsburgh, Cincinnati, Chicago & St. Louis Ry. v. Backus, 154 U. S. 421; 14 Sup. Ct. Rep. 1114; affirming same case, 133 Ind. 625; 33 N. E. Rep. 432.

98. Sworn Statement—

77. Between the first day of March and the fifteenth day of May, of the year eighteen ninety-one, and at the same time in each year thereafter when required by the County Auditor, any person, company or corporation, so owning, managing, operating or constructing a railroad shall make and file with the County Auditor of the respective counties in which the railroad may be located, a statement or schedule, verified by the oath of such person, or the president and secretary of such corporation, showing the property held for right of way, and the length of the main and all side and second tracks and turnouts, in such county, and in each city or town in the county through, or into which the road may run, and describing each tract of land, other than a city or town lot, through which the road may run in accordance with the United States, or other surveys, giving the width and length of the strip of land held in each tract and the number of acres thereof. They shall also state the value of improvements and stations located on the right of way. New companies shall make such statements in March next after the location of their roads. When such statement shall have been once made, it shall not be necessary to report the description as hereinbefore required, unless directed so to do by the County Auditor; but the company shall, during the month of March, annually, report the value of such property, by the description set forth in the next section of this act, and note all additions or changes in such right of way as shall have occurred. (As amended February 25, 1903. Acts 1903, p. 49; 4 Burns Supp., §8495.)

99. Railroad Track—

78. Such right of way including the superstructures, main, side or second track and turnouts, turntable, telegraph poles, wires, instruments and other appliances, and the stations and improvements of the railroad company on such right of way (excepting machinery, stationary engines and other fixtures, which shall be considered personal property) shall be held to be real estate for the purpose of taxation, and denominated "railroad track," and shall be so listed and valued, and shall be described in the assessment thereof as a strip of land extending on each side of such

railroad track and embracing the same, together with all the stations and improvements thereon, commencing at a point where such railroad track crosses a boundary line in entering the county, township, city or town, tending to the point where such track crosses the boundary line leaving such county, township, city or town, to the point of termination in the same, as the case may be, containing — acres, more or less (inserting name of county, township, city or town, or boundary line of same, and number of acres and length in feet), and when advertised or sold for taxes, no other description shall be necessary to convey a good title to the purchaser. (3 Burns R. S. 1901, §8496.)

1. *Who Values and Assesses.*—Under the laws of this State, the State Board of Equalization (State Board of Tax Commissioners) has exclusive authority to value and assess the railroad property denominated "railroad track" and "rolling stock." Pfaff v. Terre Haute, etc., R. R. Co., 108 Ind. 144, 147; 9 N. E. Rep. 93.

2. *Railroad Track.*—The right of way, with the improvements upon it, is to be valued and assessed as "railroad track." Pfaff v. Terre Haute, etc., R. R. Co., 108 Ind. 144, 147; 9 N. E. Rep. 93.

3. *"Right of Way" Defined.*—The phrase "right of way" is not limited to a strip of land of any definite width at all points on the line of a railroad, but includes lands and lots acquired for necessary side tracks and turnouts, and the improvements thereon in the way of coal sheds, freight houses, water tanks, repair shops, roundhouses and the like. Pfaff v. Terre Haute, etc., R. R. Co., 108 Ind. 144, 147; 9 N. E. Rep. 93; Chicago, etc., R. R. Co. v. People, 98 Ill. 350.

100. Value, How Apportioned—

79. The value of "railroad track" shall be listed and taxed in the several counties, townships, cities, or towns in the proportion that the length of the main track in such county, township, city or town bears to the whole length of the road in this State, except the value of the side or second track, and all the turnouts and all station houses, depots, machine shops or other buildings belonging to the road, which shall be taxed in the county, township, city or town in which the same are located. (3 Burns R. S. 1901, §8497.)

1. *Local Benefits.*—"Thus, the county, township, city or town, gets its proportion of the taxes assessed upon the main line, and the whole of the taxes assessed upon the side tracks and turnouts, and the land upon which they and other improvements are located, to the extent that such side tracks, etc., are located in the county, township, city or town." Pfaff v. Terre Haute, etc., R. R. Co., 108 Ind. 144, 150; 9 N. E. Rep. 93; Chicago, etc., R. R. Co. v. People, 98 Ill. 350.

101. Rolling Stock—

80. The movable property belonging to a railroad company shall be held to be personal property, and denominated for the purpose of taxation, "rolling stock." Such rolling stock shall be listed and taxed in the several counties, townships, cities and towns in the proportion that the main track used or operated in

such county, township, city or town bears to the length of the main track used or operated by such person, company or corporation, whether owned, operated or leased by him or them in whole or in part. (3 Burns R. S. 1901, §8498.)

1. *Part of Real Estate.*—The Legislature may provide that rolling stock shall be regarded as real estate for the purpose of taxation. Louisville, etc., R. R. Co. v. State, 25 Ind. 177; 87 Am. Dec. 358; Indianapolis, etc., R. R. Co. v. Elmer, 69 Ind. 71.

102. Other Personalty—

81. All personal property of any railroad, except that specifically taxed and including the tools and material for repairs, machinery, fixtures and stationary engines, shall be listed and assessed in the county, township, city or town, wherever the same may be, on the first day of March of each year. (As amended February 25, 1903. Acts 1903, p. 49; 4 Burns Supp., §8499.)

103. Other Realty—

82. All real estate of any railroad company other than that denominated "railroad track," with all the improvements thereon, shall be listed as lands and lots, as the case may be, in the county, township, town or city where the same are located. In describing such real estate wherever a railroad company shall have made or makes and records a plat of any contiguous lots or parcels of land belonging to it, the same may be described as designated on such plat. (3 Burns R. S. 1901, §8500.)

104. Inventory by Company—

83. Between the first day of March and the fifteenth day of May of each year, every person, company or corporation, owning, constructing or operating a railroad in this State, shall return to the County Auditor a list or schedule verified by the oath of such person so owning, constructing or operating if an individual, or, if a company or corporation, by the oath of the superintendent or secretary of such company or corporation, which shall state the mileage of railroad track, giving the length of the main and side or second track and turnouts, and showing the proportion of such mileage located in each municipal subdivision of said county, together with the total in the county. Said list or schedule shall also contain a full and correct inventory of all the other personal property of such railroad company in said county not specifically taxed, including the tools and machinery [material] for repairs, the machinery, fixtures and stationary engines, and such property shall be classified and separated into the particular county, township, cities and towns wherein the same may be on the first day of March, with the true cash value thereof, on the first day of March of the current year. Such list shall also contain an inventory of

all the real estate other than that denominated railroad track, owned by said railroad company, on the first day of March of the current year. Such property shall also be listed with reference to the amount, kind and value on the first day of March of the year in which it is listed. (As amended February 25, 1903. Acts 1903, p. 49; 4 Burns Supp., §8501.)

1. *"Machinery for Repairs."*—This section prior to its amendment in 1903 used the phrase "machinery for repairs," but the Attorney-General found that it was an error in enrollment, and should have been "material for repairs." Taylor, 1902, p. 117. The error has evidently been now enacted a law.

105. Auditor's Return to Assessor—

84. The County Auditor, as soon as he receives such list, shall return to the proper assessor a copy of so much of said list as relates to assessable property therein contained, and such property shall be listed and assessed by such assessor. Such property shall be treated in all respects, in regard to assessment and equalization, the same as other similar property belonging to individuals, except that it shall be treated as property belonging to railroads, under the terms "lands," "lots" and "personal property." (As amended February 27, 1901. Acts 1901, p. 44.) (3 Burns R. S. 1901, §8502.)

1. *Notice Not Necessary.*—Where a railroad company returns a schedule and valuation of its personal property to the County Auditor, and such Auditor submits the same to the Assessor to be assessed, the railroad company is not entitled to notice before the Assessor can make the assessment at a greater valuation than that returned by the company. Chicago, etc., R. R. Co. v. John, 150 Ind. 113; 48 N. E. Rep. 640.

106. Sworn Statement—

85. At the same time that the lists or schedules as hereinbefore required to be returned to the County Auditor the person, company or corporation running, operating or constructing any railroad in this State shall under the oath of such person, or the Secretary or Superintendent of such company or corporation, return to the Auditor of State sworn statements or schedules, as follows:

First. Of the property denominated "railroad track," giving the length of the main and side or second tracks and turnouts, and showing the proportions in each county and township, and the total in the State.

Second. The rolling stock, whether owned or hired, giving the length of the main track in each county, and the entire length of the road in this State.

Third. Showing the number of ties in track per mile, the weight of iron or steel per yard used in the main and side tracks, what joints or chairs are used in track, the ballasting of road, whether graveled, stone or dirt, the number and quality of build-

ings or other structures on "railroad tracks," the length of time iron or steel in track has been used, and the length of time the road has been built.

Fourth. A statement or schedule showing:

1st. The amount of capital stock authorized and the number of shares into which such capital stock is divided.

2nd. The amount of capital stock paid up.

3rd. The market value, or if no market value, then the actual value of the shares of stock.

4th. The total amounts of all indebtedness except for current expenses for operating the road.

5th. The total listed valuation of all its tangible property in this State. Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the Auditor of State. (3 Burns R. S. 1901, §8503.)

107. Penalty for Neglect—

86. If any person, company or corporation owning, operating, or constructing any railroad, shall neglect or refuse to return to the County Auditor the statements or schedules required to be returned to them, the property so to be returned to them and assessed by the Assessors as above specified shall be listed and assessed as other property. In case of failure to make returns to the Auditor of State, as hereinbefore provided, the Auditor of State, with the assistance of the County Auditors and Assessors when he shall require such assistance, shall ascertain the necessary facts and lay the same before the State Board of Tax Commissioners. In case of failure to make such statement, either to the County Auditor or Auditor of State, such corporation, company or person shall forfeit, as a penalty, not less than one thousand dollars nor more than five thousand dollars for each day's omission after the first day of June of each year, to be recovered in any proper form of action in the name of the State of Indiana on the relation of the Attorney-General, and paid into the State Treasury. Such Attorney-General shall conduct such prosecution and be entitled to ten per centum on the amount of judgment so recovered and paid in. (3 Burns R. S. 1901, §8504.)

108. Report to State Board of Tax Commissioners—

87. The Auditor of State shall annually on the meeting of the State Board of Tax Commissioners lay before said Board the statements and schedules herein required to be returned to him, and said Board shall assess such property in the manner herein-after provided. (3 Burns R. S. 1901, §8505.)

1. *Constitutional.*—The provisions of the act of March 6, 1891, providing for the assessment of railroads for taxation, and the provisions of such statute

defining the powers and duties of the State Board of Tax Commissioners in connection with such assessment is a valid and constitutional enactment. *Cleveland, etc., Ry. Co. v. Backus*, 133 Ind. 513; 33 N. E. Rep. 421; 18 L. R. A. 729, affirmed 154 U. S. 439; 14 Sup. Ct. Rep. 1122; *Pittsburgh, etc., Ry. Co. v. Backus*, 133 Ind. 625; 33 N. E. Rep. 432; *Pittsburgh, etc., Ry. Co. v. Backus*, 154 U. S. 421; 14 Sup. Ct. Rep. 1114.

109. Valuations Entered—

88. The County Auditor shall enter the railroad property of all kinds as listed for taxation upon the proper tax duplicate, and shall enter the valuation as assessed, corrected and equalized in the manner provided in this act and against such assessed, corrected or equalized valuation as the case may require, the County Auditor shall compute and extend all taxes for which said property is liable. And the County Treasurer shall collect the taxes charged against said railroad property, and pay over and account therefor in the same manner as other taxes are collected and accounted for. (3 Burns R. S. 1901, §8506.)

[Acts 1901, p. 121. Approved and in force March 5, 1901.]

110. Street Railroads Included—

1. The word "railroad," wherever it occurs in an act entitled "An act concerning taxation, repealing all laws in conflict therewith and declaring an emergency," approved March 6, 1891, shall, from and after the taking effect of this act, be considered, for all purposes of taxation, as including every kind of street railroad, suburban railroad or interurban railroad, association, company or corporation, whether its lines of railroad be maintained either at the surface, or above or below the surface of the earth, and by whatever power its vehicles are transported; and every person or persons, association or corporation operating such street, suburban or interurban road, shall make returns for taxation upon all such property in the same manner that returns are made upon other railroad property and upon similar blanks, and taxes shall be levied, assessed and collected upon such street, suburban or interurban railroad property, in the same manner as taxes are now or hereafter may be levied, assessed and collected upon other railroad property, and that so much of sections 18 and 73 of said act of 1891 as is in conflict with this act be and the same is hereby repealed. (3 Burns R. S. 1901, §8506a.)

1. *Sections 18 and 73.*—These sections are sections 28 and 94 of this act.

2. *Method of Assessing Interurban Railroads.*—Street railroads must make to the State Board of Tax Commissioners the same character of return exactly as is made by steam railroads. They must return to the County Auditor for classification and separation by him to the Township Assessor, to be assessed by the Township Assessor, the classes of property defined by sections 101 and 102. Such list must set out all the personal property not covered under the general designation "rolling stock;" also all tools, material for repairs, machinery, fixtures, stationary engines, and real estate not used for railroad purposes. With elec-

tic roads this will cover dynamo and machinery in power stations. It will not cover any of the poles, wires or superstructure along the railroad tracks, all of which shall be assessed by the State Board of Tax Commissioners. All power houses, as well as all stations, depots, car barns, machine shops or other buildings upon any right of way or property used for railroad purposes, must be assessed by the State Board, the same as in case of steam railroads. No materials should be assessed by the local Assessors when such materials are scattered along the right of way, such as rails, ties, etc., to be used in taking the place of other rails and ties. Taylor, 1902, p. 118.

ARTICLE 11—BUILDING ASSOCIATIONS.

111. Statement—Tax.

112. Classes of Stock Defined—Taxation.

[Acts 1891, p. 199. Approved and in force March 6, 1891.]

111. Statement—Tax—

89. Building, Loan-Fund and Saving Associations shall be listed and assessed in the following manner: Before the first day of June of each year, the secretary of every building, loan and savings association shall file with the Auditor of the county in which such association was organized, a duplicate statement verified by said secretary, showing the amount paid into said association by shareholders upon shares of stock issued by it up to the first day of April preceeding and then outstanding, and also the amount loaned up to said date, to shareholders, and secured by mortgage upon real estate listed for taxation. And the Auditor shall deliver said statement to the proper Assessor, who shall proceed to assess said association for taxation with the amount shown to have been paid into said association up to said first day of April upon outstanding shares of stock, less the amount shown by the statement to have been loaned to shareholders upon said mortgage security so listed for taxation, and neither said association nor the shareholders therein shall be liable to other taxation upon said shares of stock. (3 Burns R. S. 1901, §8507.)

1. *Repeal.*—The above section repeals the act of March 7, 1887. Acts 1887, p. 40.

2. *Constitutional—Balance in Treasury.*—Constructing the above section relative to the taxation of building and loan associations with Section 1, Article 10 of the Constitution, and indulging the presumption that the Legislature did not intend to violate the Constitution, the conclusion follows that it was intended by such section to tax, not the stock of the corporation, but the holdings of its members. Harn v. Woodard, 151 Ind. 132, 137; 50 N. E. Rep. 23.

3. *Stock.*—It is settled law in this State that the stock in building and loan associations, whether paid up, prepaid, running or otherwise, is taxable at its true cash value. State v. Real Estate, etc., Assn., 151 Ind. 503; 51 N. E. Rep. 1061.

4. *Construction of Section.*—The above section was not intended as a limit upon the right further to tax the holders of stock or those to whom the building associations were indebted. Harn v. Woodard, 151 Ind. 132-135; 50 N. E. Rep. 23.

5. *Depositor a Creditor.*—One who has deposited his money with a building

and loan association, subject to call at any time upon reasonable notice, with interest or earnings is a creditor to the extent of such deposit and interest or earnings and his holdings constitute a credit. Harn v. Woodard, 151 Ind. 135, 136; 50 N. E. Rep. 23.

6. *Cash Value of Stock.*—Whether the stockholder who has loaned his money to the association, and has received certificates of stock in evidence of such loan has in fact paid in full for the stock or has made any part payment thereon, he should in either case, be taxed for the true cash value of his stock, and the value will, in general, be the amount paid on the stock. * * * But the stockholder who is simply a lender to, a creditor of, the association * * * holds his stock in evidence of such credit, just as he might hold the promissory note or other obligation of the association. Whether, in fact, he holds a certificate of stock or not, or whatever other evidence there may be of such credit, can make no difference. He is an actual creditor. * * * Such a credit, therefore, by whatever name it may be called, or however it may be evidenced, is taxable under the Constitution as any other credit. Deniston v. Terry, 141 Ind. 677; 41 N. E. Rep. 143.

7. *Cash Value—Exemptions.*—Stock in building and loan associations, whether paid up, prepaid, running or otherwise is taxable at its true cash value. Any law, either directly or indirectly, exempting stock in building and loan associations from taxation is unconstitutional. State v. The Workmen's, etc. Assn., 152 Ind. 278; 51 N. E. Rep. 1061.

8. *Exemption of Stockholders.*—The above section does not exempt stockholders in building associations from taxation on the value of their credits in the association. Co-operative, etc., Assn. v. State, 156 Ind. 463; 60 N. E. Rep. 146.

9. *Examination of Books of Company.*—Before 1901, when section 40 was amended, it was held that the courts could compel by mandate a building association to permit a tax assessor to examine its books in order to determine if a taxpayer owned stock of the association, in order to list it as omitted property. Co-operative, etc., Assn. v. State, 156 Ind. 463; 60 N. E. Rep. 146.

10. *Stockholders Return for Taxation—Deductions.*—It is proper to require the holders of building association stock to return it for taxation, prepaid and fully paid, without any right of deduction, and partly paid or current, a credit, from which the stockholder would be permitted to deduct his liabilities. Ketcham, 1897, p. 105.

11. *Taxes by Whom and How Paid.*—The shareholders of the associations pay the taxes. Where a shareholder has borrowed money on his shares the real estate is taxed to the shareholder. Shareholders who have not borrowed money are charged with the value of their shares. These shares are held as credits and are to be listed for taxation as other property. The value of these shares will represent all the property of the association. Taylor, 1900, p. 129.

[Acts 1897, p. 284. Approved March 8, 1897. In force July 1, 1897.]

112. Classes of Stock Defined—Taxation—

4. For the purpose of this act, paid-up stock shall be such stock as the owner shall have paid the full face value thereof at the time of the subscription therefor. Prepaid stock shall be stock upon which the owner shall have paid any specific sum in advance at the time of subscription, leaving the balance necessary to mature the same to be paid by the dividends to be declared thereon by the association, or stock on which more than six months' dues have been paid in advance. All building and loan associations, as such, shall be exempt from taxation. Shares of stock on which loans have not been made or advanced by the association, which stock is paid-up or prepaid, shall be considered and held as credits

of the members, individually, and listed by them, and assessed against them for taxation as other property. (2 Burns R. S. 1101, §4463d.)

1. *Receiver Pays Taxes.*—The above section applies only to a building association that is a "going concern;" and whenever it is put into the hands of a receiver, the credits in his hands, of whatever character, can be properly assessed and taxed. *Board v. Marion Trust Co.*, 30 Ind. App. 137; 65 N. E. Rep. 583.

2. *Double Taxation—Tasing Fund Arising from Interest and Premium.*—It has been held that the assessment of a building and loan association with money loaned arising from its earnings from interest and premium does not amount to double taxation on the ground that the stockholders were assessed with the same property, since only the stock itself was taxable to the stockholders. *International, etc., Assn. v. Board*, 30 Ind. App. 12; 65 N. E. Rep. 297; *International, etc., Assn. v. Board*, 30 Ind. App. 704; 65 N. E. Rep. 1125.

ARTICLE 12—TOWNSHIP ASSESSOR.

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| 113. Election—Oath—Bond—Vacancies. | 126. Assessor's Oath. |
| 114. Deputies. | 127. Memorandum to Owner. |
| 115. Compensation. | 128. Quadrennial Assessments. |
| 116. Auditor Delivers Lists to Assessor—Blanks. | 129. Tishular List to Auditor—Contents. |
| 117. Lists to Owners—Notice. | 130. Correction of Errors. |
| 118. Realty, How Valued. | 131. City and Town Plats. |
| 119. Assessing Lands Occupied by Highways and Railroads. | 132. Apportionment of Realty in New Towns. |
| 120. Buildings on Rights of Way. | 133. Duty of County Auditor. |
| 121. Mines and Quarries. | 134. Omitted Property—Assessor's Duty. |
| 122. Assessor's Powers. | 135. Irregularities Not to Vitate. |
| 123. Land—Rule as to Quantity. | 136. Assessor's Return Statements. |
| 124. Values, How Fixed. | 137. Assessor Failing to Swear Parties—Penalty. |
| 125. Assessor's Return Book. | |

[Acts 1891, p. 193. Approved and in force March 6, 1891.]

1.3. Election—Oath—Bond—Vacancies—

90. For the purpose of listing and assessing all property for taxation there shall be elected at the general election on the first Tuesday after the first Monday in November, in the year one thousand nine hundred and four, and at the general election on the first Tuesday after the first Monday in November every fourth year thereafter, in each township of the several counties in this State, an Assessor for such township, who shall hold his office for the term of four years from the first day of January following, and until his successor is elected and qualified. Within ten days after the beginning of his term he shall give bond, with at least two good and sufficient sureties, to the acceptance of the County Auditor, in the sum of three thousand dollars, payable to the State of Indiana and conditioned for the faithful and impartial discharge of his duties according to law, and shall take and subscribe an oath or affirmation, to be endorsed on his bond, that he will

faithfully, honestly and impartially discharge the duties of his office to the best of his skill and ability; and the bond so endorsed shall be deposited with the County Auditor, and the said Auditor is hereby authorized to administer the oath of office as aforesaid. If such bond and oath are not given and filed in the County Auditor's office within said ten days, the office shall be vacant and the County Auditor shall at once fill such vacancy by appointment, and such appointee shall give the bond and take the oath as above required. And if from any other cause a vacancy should occur in said office in any township at any time, the County Auditor shall fill such vacancy by appointment, and the person so appointed shall qualify as herein required. All Township Assessors last elected or appointed shall continue in office until the next general election, and until their successors are elected and qualified under this act, at the same rate and limit of compensation as herein provided. The oath of office to be taken by said Assessor and endorsed upon his bond shall be in the words following:

I, _____, ss.
do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of Indiana; that I will faithfully, impartially, and honestly discharge the duties of my office as Township Assessor, particularly that I will assess all property assessed by me at its true cash value, as such value is defined in Section 53 of the act concerning taxation, according to my best knowledge and judgment so help me God.

Subscribed and sworn to before me this _____ day of _____, 189—.

_____, County Auditor.

All deputy assessors shall be sworn in like manner. (As amended February 25, 1903. Acts 1903, p. 49; 4 Burns Supp., §8508.)

1. *Repeal.*—The above section as amended in 1903 superseded so much of section one of the act of January 15, 1897 (Acts 1897, p. 4) as relate to Assessors.

2. *Administering Oath.*—A duly qualified and acting Assessor has power to administer all necessary oaths in connection with tax lists. *State v. Reynolds*, 108 Ind. 353; 9 N. E. Rep. 287.

114. Deputies—

91. Whenever a Township Assessor shall be unable to complete the duties required of him within the time designated by law, he may appoint one or more suitable and competent persons as deputies to assist him in making the assessment and he may designate the portion of the township, town or city in which they shall act. Such deputies shall make their return to the proper Assessor. (3 Burns R. S. 1901, §8509.)

1. *Administering Oath.*—A Deputy Assessor, duly appointed, has power to administer all necessary oaths in connection with tax lists. *State v. Reynolds*, 118 Ind. 353; 9 N. E. Rep. 287.

115. Compensation—

92. For their services the Township Assessors shall receive, as compensation, two dollars and fifty cents (\$2.50) per day for the time actually employed in the duties of their office, not exceeding such limit as may be fixed by law in any one year, to be paid out of the county treasury, upon the warrant of the County Auditor, and they shall receive no extra allowance for their services. Their deputies shall receive two (\$2.00) dollars per day for each day they are actually employed, to be paid them in like manner: Provided, however, That in townships having a population of five thousand (5,000) or more, the salary of the Assessor shall be two hundred (\$200) dollars per year with twenty-five (\$25.00) dollars additional for each thousand or fraction thereof of population above five thousand, and not more than twenty thousand (20,000) as shown by the last preceding United States census; and that for such compensation the Township Assessor shall be required throughout the year to attend to all duties that may come before him: And provided, further, That in townships having a population of over twenty thousand (20,000) and not more than seventy-five thousand (75,000) as shown by the last preceding United States census, such Assessor shall receive not less than eight hundred (\$800) dollars nor more than fifteen hundred (\$1,500) dollars per annum, which amount is to be determined by the Board of County Commissioners of the county in which said township is situate, and which sum shall be deemed to be payment in full for all services of whatever kind he may perform as such Assessor, he being required to keep his office open each working day in the year: And provided, further, That in townships containing a population of over seventy-five thousand (75,000) and not more than one hundred thousand (100,000), as shown by the last preceding United States census, each Assessor shall receive the sum of eighteen hundred (\$1,800) dollars per annum, and such sum shall be deemed payment in full for all services of whatever kind he may perform as such Assessor, he being required to keep his office open every working day in the year: And provided, further, That each Assessor in any township in this State containing a population of over one hundred thousand (100,000), as shown by the last preceding United States census, shall receive, for the time he is necessarily engaged in the discharge of his official duties the annual salary of twenty-five hundred (\$2,500) dollars and such payment shall be deemed to be payment in full for all services of whatever kind he shall perform as such Assessor, he being

required to keep his office open every working day in the year. (As amended March 9, 1903. Acts 1903, p. 344; 4 Burns Supp., §8510.)

1. *Invalid Amendment.*—The attempt to amend this section in the act of February 25, 1903 (Acts 1903, p. 49, 63) was ineffectual, for the reason that the section as above set out went into force before the amendment of February 25th took effect.

116. Auditor to Deliver List of Lands to Assessor—Blanks—

93. The County Auditor of each county shall, on or before the first day of March in each year in which realty is assessed, make out and deliver to the Assessors, by civil townships, lists of all lands, town and city lots entered on the duplicate of the preceding and present year, noting thereon all transfers which may have been made subsequent to the making out of such duplicate, and shall also enter thereon all new entries and other lands and city, town and village lots lying within his county which may come to his knowledge and not previously entered for taxation, and in so doing when a whole section, half section, quarter section or half-quarter section appears to belong to one owner, it shall be described in one description and shall be listed as one tract; and when all the lots in one block appear to belong to one owner they shall be described in one description and listed as one block; when several lots in the same block shall belong to the same owner, they shall as far as practicable be included in one description, and in making up the tax duplicate it shall be the duty of the County Auditors, as far as practicable, to preserve and perpetuate such consolidated description, and it shall be the duty of said Auditor to furnish the Assessor with all blanks necessary to the discharge of his official duties, and he shall also, where the same have not been already prepared, prepare plats of each civil township of his county divided into sections and quarter sections, and grant and other governmental subdivisions, and deliver the same to him with said blanks, and it shall be the duty of said Assessor to designate in pencil the lands of each owner on such plats. When such plats have been once prepared, they shall be carefully preserved by the County Auditor, to be used whenever practicable in future assessments. (As amended February 25, 1903. Acts 1903, p. 49; 4 Burns Supp., §8511.)

117. Lists to Owners—Notice—

94. The Assessor shall call upon each and every person residing in his township for a list of all lands, city, village and town in-lots and out-lots, owned by such person or persons, lying within his township, which may be subject to taxation, which list shall particularly set forth the names of the owners, the number of acres of land in each tract, lot, section or subdivision thereof, the

range, township, section, quarter section, tract or lot, or part thereof, or the number of the entry, location or survey, as the nature of the general or particular survey may require. And if the same can not be described by the Congressional survey, then it shall be described by metes and bounds, so as to designate and identify the same or by reference to a sufficient and correct description contained in some public record of the county, or by the number and designation as contained in some partition proceeding, identifying by book and page of record whenever practicable. When he makes such call he must notify the person, company or corporation, of their duty to make out and return such list within five days. If he deems it necessary to obtain an accurate description of any separate lot or tract in his township, he may require the owner or occupant to exhibit all the title papers he may have in his possession, and whenever the person called upon fails or refuses to furnish such list to such Assessor at his office or place of business within five days after being called upon, the Assessor shall make the list according to the best information he can obtain and for that purpose, he may examine under oath any person or persons whom he may suppose to have a knowledge thereof, and the County Auditor shall add to such valuation, when returned, twenty-five per centum on the value so returned. To enable the County Auditor to make such addition, the Assessor shall enter in his return, in a column provided for that purpose, opposite the name of every person, company or corporation, required to list real estate, who has, after notice, failed or refused to furnish the list required, these words, "Failed or refused after notice." (3 Burns R. S. 1901, §8512.)

1. *In Wrong Name.*—Assessing real estate in the name of a person not the owner does not render the assessment invalid. *Fell v. West*, (Ind. App.) 719; 3 Burns R. S. 1901, §8633.

118. Realty—How Valued—

95. Real property shall be valued by the Assessor as follows: Lands and the improvements and buildings thereon, or affixed thereto shall be valued at their full, true cash value, estimated at the price they would bring at a fair, voluntary private sale, not a forced or Sheriff's sale, taking into consideration the fertility of the soil, the vicinity of the same to railroads, macadamized roads, clay roads, gravel roads and turnpike roads, State or county roads, cities, towns, villages, navigable rivers, water privileges on the same, or in the vicinity of the same, the location of the route of any canal or canals, with any other local advantages of situation. In-lots and out-lots in all towns, cities or villages, with the improvements thereon or affixed thereto, shall be valued at their full cash value, as aforesaid, taking into consideration all the

local advantages upon actual view of the premises. All lands and lots shall also be listed at such valuation, without taking into consideration any improvements, and this valuation, as well as the valuation with the improvements shall be set down in a proper column to be left for that purpose. (3 Burns R. S. 1901, §8513.)

1. *Enjoining.*—It is presumed that the officer, in fixing a value on real estate, did his duty, and any one claiming that he exceeded it has the burden to show that fact. If the valuation has been increased or raised by the officer, the collection of the tax will not be enjoined unless such valuation exceeds the true value. *Fell v. West*, 35 Ind. App. 20; 73 N. E. Rep. 719; *People's Gas, etc., Co. v. Harrell*, 36 Ind. App. 588; 76 N. E. Rep. 318.

[Acts 1905, p. 521. Approved March 8, 1905. In force April 15, 1905.]

119. Lands Occupied by Highways and Railroads—

37. All officers engaged in the assessment of property for taxation are prohibited from assessing for taxation, against any adjacent property holder, the real estate occupied by any railroad, interurban or street railway, or by any public highway, and no part of the land so belonging to such property holder shall be assessed against him for taxation except the portion beyond the lines of the right of way of the railroad, interurban or street car company or the right of way used and occupied as such public highway: *Provided*, That if the Assessor and the land owner shall fail to agree on the amount of land contained in such railroad, interurban or street car right of way on [or] such public highway, then such land owner, to receive the benefit of such exemption, shall determine the amount of land in dispute by actual survey and shall bear all expenses of the same. (4-Burns Supp., §6762.)

1. *Repealing Section.*—Section two of this act repeals all laws in conflict with the act.

[Acts 1897, p. 199. Approved and in force March 6, 1891.]

120. Buildings on Right of Way—

96. When a building or structure is located on the right of way of any canal, railroad or other company, leased or granted for a term of years to any other, the same shall be valued at such price as such building or structure and lease or grant would sell at a private, voluntary sale for cash. (3 Burns R. S. 1901, §8514.)

121. Mines and Quarries—

97. In valuing any real property on which there is a coal or other mine, or stone or other quarry, the same, if the land and the mine or quarry are owned by the same person, shall be valued at such price as such property, including the mine or quarry, would sell at a private, voluntary sale for cash. Where the mine or the quarry is owned or leased by a person other than the owner of the land, such land shall be valued, exclusive of the mine or

quarry, as other lands are valued, and the mine or quarry and all improvements and leasehold and appurtenances shall be valued separately from the land, according to the true cash value thereof. (3 Burns R. S. 1901, §8515.)

22. Assessor's Powers—

98. For the purpose of enabling the Assessor to determine the value of buildings and other improvements, he is hereby required to enter, after first making known his intention to the owner or occupant thereof, and fully examine all buildings and structures of whatever kind, which are not by the laws of the State specially exempt from taxation. (3 Burns R. S. 1901, §8516.)

23. Land—Rule as to Quantity—

99. The Assessor, in ascertaining or determining the quantity of land in the several tracts within his township, shall be governed by the following rules: Whenever the owner or person in whose name it is listed shall hold, by virtue of a deed from another party, or from the State of Indiana, or by patent from the United States for Congress land, such deed or patent, if the quantity be therein stated, shall be taken and received as evidence of the quantity in the tract described; but if such lands shall have been surveyed subsequent to the survey made by the United States, and it shall be proven to the satisfaction of the Assessor that any such tracts of land contain a greater or less quantity than is described in the patent or deed under which said lands are held, then the Assessor shall charge the owner with the true quantity as ascertained by such subsequent survey; if the owner or person in whose name any lands are listed within the French or Clark's grant, shall hold, under an original entry or survey, with or without patents thereon, it shall be the duty of the Assessor to require the said owners or holders to cause the same to be surveyed by the County Surveyor and to return the quantity under the certificate of said Surveyor, attested by oath or affirmation, within ten days after said owners or holders shall have been called upon to list their lands for taxation, and if any such owner or holder shall refuse or neglect to survey and list his lands as herein provided, or if he, she or they be non-residents of the township, then it shall be the duty of the Assessor to cause such lands to be surveyed and returned to himself, the expense of which survey shall be paid from the county treasury, and be by the Auditor of the county assessed against such lands in the succeeding year, and collected in the same manner as taxes are collected thereon: Provided, That if any owner or holder of lands has had the same previously surveyed and shall produce to the Assessor a certificate of the survey, other than that under the original entry of said

lands, such survey shall be taken by the Assessor, or if the Assessor shall be satisfied from other competent evidence adduced to him under oath or affirmation that the quantity returned is correct, and that no surplus exists in the original survey, he shall enter and return the same without further survey: Provided, That the Assessor may deduct from the value of such tract of land, owned by any person, the value of the amount of land occupied and used by any railroad, public highway or canal, at the time of such assessment. (3 Burns R. S. 1901, §8517.)

124. Values, How Fixed—

100. In making out this list the Assessor shall place opposite to each tract of land or lot listed the value without improvements, and also in another column opposite the value of the improvements erected thereon and affixed thereto. (3 Burns R. S. 1901, §8518.)

125. Assessor's Return Book—

101. Each Assessor shall, in a book to be furnished by the County Auditor, on or before the first Monday in June in each year, make out and deliver to such Auditor, a return of the real estate listed for taxation in his township, which return shall contain:

First. The names, arranged in alphabetical order, of the persons in whose names the real estate of the township (except such as lies within the limits of any city, town or village) has been listed, and in appropriate columns opposite each name the description of each parcel of real estate listed in such name, and the value of such separate parcel as determined by the Assessor from actual view.

Second. The names, arranged in alphabetical order, of the persons in whose name the real estate in each city, town or village, respectively, in such township, has been listed, and in appropriate columns opposite each name, the description of each parcel of real estate listed in such name, and the value of each separate parcel as determined by the Assessor from actual view. In cases where the name of the owner of any parcel of real estate is unknown it shall be so returned. Each parcel of real estate shall be described according to the Congressional or other survey, division or subdivision, or according to the recorded plat or subdivision thereof and also in cases of parts of town lots by the number of feet along the principal street or streets upon which it abuts; and any description may be supplemented by reference to any public record of the county. (3 Burns R. S. 1901, §8519.)

126. Assessor's Oath—

102. Each Assessor or Deputy Assessor shall take and subscribe an oath, which shall be certified by the County Auditor, or other officer administering the same, and attached to the return which he is required to make to the County Auditor, in the following form:

I, _____, Assessor for the township of _____ in _____ County, in the State of Indiana, do solemnly swear that the return to which this is attached contains a correct description of each parcel of real property within said township, as far as I have been able to ascertain the same; that the value attached to each parcel in said return is, as I verily believe, the full and true cash value thereof, estimated agreeably to the rules prescribed by the law, particularly section 53 of the act concerning taxation; that in no case have I knowingly omitted to demand a statement of the description and value of all the real estate which I am required by law to list, or in any way connived at any violation or evasion of any of the requirements of the law in relation to the listing and valuing of real estate, subject to all the penalties hereinafter prescribed in section 255 of this act.

Which return shall be kept at the office of the County Auditor for the inspection of any owner of property contained in such return. (3 Burns R. S. 1901, §8520.)

127. Memorandum to Owner—

103. Before or at the time of making such return, the Assessor shall leave with the owner or owners, or his, her, or their agent, if residing in the county, at his, her or their place of residence, a memorandum containing a description and value of each tract, lot or parcel of land, containing the amount of which his, her or their real estate has been assessed, respectively, and of the time when the Board of Review for the county will meet for the purpose of hearing and determining grievances and to equalize taxes within the same. (3 Burns R. S. 1901, §8521.)

1. *Notice of Assessment of Improvements.*—When only improvements are assessed, the owner should receive notice of such assessment the same as in the case of assessment of real estate. *Zeigler v. Board*, 33 Ind. App. 375; S. C. 71 N. E. Rep. 527.

2. *Over Valuation—Recovery of Wrongful Excess of Taxes.*—If an Assessor knowingly assess improvements on real estate at an amount in excess of their true cash value, the assessment is wrongful as to the excess, and the taxpayer can recover the taxes paid. *Zeigler v. Board*, 33 Ind. App. 375; S. C. 71 N. E. Rep. 527.

128. Quadrennial Assessments—

104. The first assessment of the real estate made in pursuance with the provisions of this act, shall be made in the year

1891, and a like assessment shall be made every four years thereafter, and the personal property shall be assessed at the same time such real property is assessed, and by the same person or persons, and each Assessor may, when taking the lists of personal property, correct all errors of assessment of real estate which he may discover on the books, either in the name of the person to whom the property is assessed by change of ownership or otherwise, or in the description of property. The Assessor shall annually thereafter also assess any real estate or improvement, found omitted and also note and list all changes found in improvements on real estate, and make return thereof to the County Auditor as in the year in which real estate is to be assessed. (3 Burns R. S. 1901, §8522.)

129. Tabular List to Auditor—Contests—

105. Each Assessor shall, on or before the eighteenth day of May, annually, make out and deliver to the Auditor of his county, in tabular form and alphabetical order, a list or lists of the names of the several persons, companies or corporations in whose names any personal property, moneys, credits or other taxables shall have been listed, on which list or lists he shall enter separately, in appropriate columns opposite each name, the aggregate value of the several species of personal property and taxables required to be listed as attested by the person required to list the same or as determined by the Assessor, making separate lists of persons residing out of any incorporated city or town, and of any persons who are residents of an incorporated city or town. The columns shall be accurately added up. To such return shall be attached the following oath or affirmation, to be made by himself or his deputy, and certified by the County Auditor or other officer administering the same:

I, _____, Assessor for _____ Township, _____ County, in the State of Indiana, do solemnly swear (or affirm) that the value of all personal property, moneys, credits and other assessables, of which a statement has been made and attested by oath or affirmation of the person required by law to list the same, is truly returned as set forth in such statement; that in every case where by law I have been required to ascertain the amount and value of personal property and assessables of any person, company or corporation, I have diligently, and by the best means in my power, endeavored to ascertain the true amount and value of such personal property and assessables, and that, as I verily believe the full value thereof so ascertained by me and estimated by the rule prescribed by law, particularly by Section 53 of the act concerning taxation, is set forth in the annexed return; that in no case have I knowingly omitted to demand a statement

of the description and value of personal property or of the amount of moneys and credits, or of the amount and value of other stocks or bonds or other assessables, which any person is required by law to list; nor have I in any way connived at any violation or evasion of any of the requirements of law in relation to listing or valuing the personal property, moneys, credits, stocks or other assessables for taxation. (As amended February 25, 1903. Acts 1903, p. 49; 4 Burns Supp., §8523.)

1. *Section 53.*—Section 53 referred to in the above section is Section 63 of his edition of the tax law.

130. Correction of Errors—

106. When the returns of the Assessors are received, the County Auditor, if satisfied that such Assessor has omitted any personal property, moneys, rights, credits, effects, stocks or real estate in his township which it was his duty to return, may, if he deems it expedient, authorize and require such Assessor to proceed to correct any error or omission which may have occurred as aforesaid, and in such case such Assessor shall within ten days after being so required and authorized proceed to correct such errors and omissions and make returns thereof to such County Auditor; but nothing herein contained shall authorize any Assessor to reduce the amount assessed against any person in his former return, or the Auditor may himself ascertain the value and add the same to the assessment, and such County Auditor shall charge such person with the additional amount, if any, returned by such Assessor. (3 Burns R. S. 1901, §8524.)

1. *Increasing Valuation.*—County Auditors can not increase the value of the assessment of property as returned by Assessors, although the property is purposely undervalued. *Williams v. Segur*, 106 Ind. 368; 1 N. E. Rep. 307; *Florer v. Sherwood*, 128 Ind. 495; 28 N. E. Rep. 71; *Board v. Senn*, 117 Ind. 410; 20 N. E. Rep. 276; *Wall v. Thomas*, 1 Ind. App. 232; 27 N. E. Rep. 578; *Donch v. Board*, 4 Ind. App. 374; 30 N. E. Rep. 204; *Reynolds v. Bowen*, 138 Ind. 434, 442; 36 N. E. Rep. 756; 37 N. E. Rep. 902; *Saint v. Welsh*, 141 Ind. 282; 40 N. E. Rep. 905; *Parkison v. Thompson*, 164 Ind. 609; 73 N. E. Rep. 109.

2. *Omitted Notes.*—But if a taxpayer, for instance, has one note of \$500 and another of \$400 on March 1st, and he returns for taxation "note" \$500, that will not prevent the Assessor or County Auditor listing the other note of \$400, or increasing his assessment on "notes" to \$900. *Reynolds v. Bowen*, 138 Ind. 434, 442; 36 N. E. Rep. 756; 37 N. E. Rep. 902; *Parkison v. Thompson*, 164 Ind. 609; 73 N. E. Rep. 109.

131. City and Town Plats—

107. Before any addition is made to any city or town, the person making the same, before such plat is recorded, shall present the same to the County Auditor, who shall assess and apportion the true valuation of each lot or parcel of land described in such plat, in the same manner as other lots are valued, and thereupon such lots or parcels shall be entered on the tax list in lieu of the

land included therein; but in making such valuation, regard shall be had to the next preceding valuation of the real estate, so that the said lots shall, as near as practicable, be equalized with adjacent lands and lots according to such valuation. (3 Burns R. S. 1901, §8525.)

1. *Assessing Lots.*—On presentation of a plat under this section to a County Auditor, he has the power to assess each lot as such for taxation, without regard to the former appraisalment of the land. *Eschenberg v. Board*, 129 Ind. 398; 28 N. E. Rep. 865.

[Acts 1893, p. 190. Approved and in force March 2, 1893.]

132. Appraisalment of Realty in New Towns—

1. Where a town has been or may be hereafter incorporated more than one year prior to the time fixed by law for the assessment and appraisalment of real estate for the purposes of taxation, it shall be the duty of the Assessor of the township in which said incorporated town is situate to assess and appraise all of the real estate in said town in the manner provided by law for the appraisalment and assessment of real estate in towns at the regular periods for the appraisalment and assessment of real estate now or hereafter determined by law. And said appraisalment and assessment herein provided for shall be made at the time the said Assessor makes the appraisalment and assessment of personal property in his township, and return to the Auditor of the county or counties in which said town is situate at the time said Assessor returns the assessment and appraisalment of personal property in the township or townships at the next succeeding assessment after the incorporation of said town. (2 Burns R. S. 1901, §4386.)

133. Duty of County Auditor—

2. To enable the Assessor to make the appraisalment and assessment required of him by Section 1 of this act, the Auditor of the county or counties wherein said town is situate, shall on or before the first day of March succeeding the incorporation of said town, upon written request of the Board of Trustees of said town, make out and deliver to the Assessor of the township or townships wherein said incorporated town is situate, a list of all the lands and lots within the corporate limits of said town, together with the names of the owners of each separate tract, parcel or lot, as shown by the records in the office of said Auditor, in tabular form. (As amended February 25, 1903. Acts 1903, p. 49.)

[1891, p. 190. Approved and in force March 6, 1891.]

134. Omitted Property—Assessor's Duty—

108. Whenever the Township Assessor, prior to the filing of his return with the County Auditor, shall discover or receive

credible information, or have reason to believe that any real or personal property has been omitted in the assessment of any year or number of years from the listing and assessing, or from the tax duplicate, or that any person, company, or corporation has for any cause omitted to list any part of his, her, or their property, or has not returned the full value thereof, or that the tax for which such property was liable from any cause has not been paid, or that any real estate, by reason of defective description thereof, has failed to pay taxes for any year, or number of years, he shall proceed to correct his list and add such property to the assessment, so that such property and the owner thereof may be charged with the proper amount of taxes thereon; but, before making such correction or addition, if the person claiming to own such property or occupying it, or in possession thereof, resides in the county he shall give the person claiming to own or occupying or having in possession such property, notice in writing of his intention to list such property, describing it in general terms, and requiring such person to appear before him at his office or place of business, at a specified time within ten days after giving such notice, to show cause, if any, why such property should not be listed and placed on the assessment book; and if the party so notified does not appear, or if he appear and fail to show to any good and sufficient cause why such assessment should not be made, such listing shall be made and the particular years for which such property should be listed shall be noted. Such Assessor shall also file with the County Auditor a statement in writing of his reasons for making such correction or assessment, and the facts or evidence upon which such reasons were based; the arrearages of tax which might have been assessed shall be charged against such person and property by the County Auditor. The County Assessor hereinafter provided for shall at any time during any year have the power and exercise the duties in this section prescribed for Township Assessors. (3 Burns R. S. 1901, §8526.)

1. *County Assessor.*—For power of the County Assessor to assess omitted property, see Sec. 140.

2. *County Auditor.*—For power of the County Auditor to assess omitted property, see Sec. 173.

3. *County Treasurer.*—For power of the County Treasurer to assess omitted property, see Sec. 182.

4. *County Board of Review.*—For power of the County Board of Review to assess omitted property, see Sec. 142.

5. *Examination of Books.*—See Section 43 for the right to examine books and papers to discover sequestered property.

6. *Failure of County Board to Assess.*—Where a private corporation has, in good faith, made out and delivered to the proper Township Assessor a verified schedule of its property, as provided by the above section, the failure thereafter of the County Board of Review to make any assessment for taxes against

the property, does not preclude the County Assessor from listing for taxation the property of such corporation. *Hunter Stone Co. v. Woodard*, 152 Ind. 474; 53 N. E. Rep. 947.

7. *Application of Section.*—This section applies to corrections and not to the making of original assessments. *Chicago, etc., R. R. Co. v. John*, 150 Ind. 113; 48 N. E. Rep. 640.

8. *Valuing Railroad Property.—Notice.*—Where under sections 83 and 84 a railroad company returns a schedule and valuation of its personal property to the County Auditor, and such Auditor submits the same to the Township Assessor to be assessed, the railroad company is not entitled to notice before the Assessor can make the assessment at a greater valuation than that returned by the company. *Chicago, etc., R. R. Co. v. John*, 150 Ind. 113; 48 N. E. Rep. 640.

9. *Concealed Property.—Duty of Assessors.*—It is the duty of each Township and County Assessor to make out and report all cases where an effort to conceal property from taxation has been made and transmit a copy thereof to the County Auditor for use by the County Board of Review, and also to the Auditor of State for use of the State Board of Tax Commissioners. *Smith*, 1892, p. 70.

135. Irregularities Not to Vitate—

109. A failure to complete or return an assessment of property, real or personal, by the Township Assessor within the time required by this act, or any informality or irregularity in making the assessment, or in the tax lists, or errors of any kind therein, shall not vitiate the same, but the same shall be as legal and valid as if completed and returned in the time required by law, and such informalities or irregularities may be corrected at any time after such return is made, and if any property is listed or assessed on or after the fifteenth day of May, and before the return of the Assessor's books, the same shall be as legal and binding as if listed and assessed before that time, but nothing in this section shall be so construed as to release such Assessor from any penalty imposed upon him by law for his neglect or failure to make his return within the period prescribed by this act. (As amended February 25, 1903. Acts 1903, p. 49; 4 Burns Supp., §8527.)

136. Assessor to Return Statements—

110. Each Assessor shall, at the time he makes return of taxable property to the County Auditor, also deliver to him all the statements of property which he shall have received from persons required to list the same, arranged in alphabetical order, corresponding with his list or lists, and also all the plats used in assessing real estate; and the Auditor shall carefully preserve the same in his office. (3 Burns R. S. 1901, §8528.)

137. Assessor Failing to Swear Parties—

111. If any Assessor or Deputy Assessor shall fail or neglect to administer to any person by him assessed any oath required by this act to be administered, he shall forfeit and pay to the State of Indiana, for the use of the school fund, the sum of

twenty dollars for each case of such omission and neglect, which may be recovered by an action in the name of the State of Indiana on the relation of the Prosecuting Attorney, before any Justice of the Peace of the county, together with the costs of such action. (3 Burns R. S. 1901, §8529.)

ARTICLE 13—COUNTY ASSESSOR.

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|----------------------------------|----------------------------------|
| 138. Election—Qualification—Bond | 140. Duties of County Assessors— |
| —Compensation. | Deputies. |
| 139. Salaries. | 141. Annual Meetings. |

[Acts 1891, p. 199. Approved and in force March 6, 1891.]

138. Election—Qualification—Bond—Compensation—

1. There shall be elected on the first Tuesday after the first Monday in November, 1906, and every four years thereafter in each county in this State, one County Assessor, who shall possess the powers and perform the duties hereinafter specified. Such County Assessor shall be a resident freeholder of the county not less than four years before the date of such election. Within ten days after his election, he shall give bond with two or more good and sufficient freehold sureties, to be approved by the County Auditor, in the sum of five thousand (\$5,000.00) dollars, payable to the State of Indiana, and conditioned for the faithful and impartial discharge of his duties, and shall take and subscribe to an oath or affirmation, to be endorsed on his bond, that he will faithfully and impartially and honestly discharge the duties of his office, which oath shall be in the form, as near as may be, of the oath of the Township Assessor, as set out in Section 90 of this act. Said bond shall be deposited with the County Auditor, who shall administer the oath endorsed thereon. If any vacancy shall occur in said office, the Board of County Commissioners shall fill the same at any regular or special session. Each County Assessor shall receive three (\$3.00) dollars per day for the time actually employed in the duties of his office, to be paid out of the county treasury on order of the Board of County Commissioners, on his filing therewith an itemized statement, duly verified, showing the time actually employed by him and the nature of his services: Provided, That in counties having a population of more than one hundred thousand, the County Assessor shall receive eighteen hundred (\$1,800.00) dollars per annum, to be paid out of the county treasury, and he shall keep his office open each and every business day during the year, and shall be authorized to appoint one deputy, who shall receive two dollars and fifty cents (\$2.50) per day, to be paid out of the county treasury, upon proper allowance to be made by the Board of County Commissioners. Whenever

any County Assessor shall have information that leads him to believe that any resident of his county has omitted or sequestered any of his property and not properly returned the same for taxation, and to enable him to fully investigate the same by examination of records and otherwise in other counties of this State and adjoining States, it shall be his duty to communicate his information to the Board of Commissioners of his county, who, if satisfied that the information of said Assessor will warrant the expense, may make an order directing him to visit such county, counties or States to make such examination of records and otherwise, and when so ordered he shall make such visit and examination and said Board of Commissioners shall allow and pay to such Assessor the actual expenses incurred by said Assessor, to be shown by his itemized and verified statement, accompanied by a voucher for each item of expense. (As amended February 25, 1903. Acts 1903, p. 49; 4 Burns Supp., §8530.)

1. *Repealing Section.*—Section 2 repeals the entire act of March 9, 1895. Acts 1895, p. 207.

2. *Section Ninety.*—Section 93 referred to in the above section is Section 110 of this edition of the tax laws.

3. *Salaries of Assessors.*—For a decision on the Salaries of County Assessors before the act was repealed in 1903 (Acts 1903, p. 49, 82). See Board v. Garty, 161 Ind. 464; 68 N. E. Rep. 1012. See §142, note 32.

[Acts 1905, p. 425. Approved March 6, 1905. In force April 15, 1905.]

139. Salaries of County Assessors—

1. The county assessors of the various counties of the state shall be entitled to receive for their services, including their services as president of the county board of reviews, the compensation specified in this act and no more; which compensation is graded in proportion to the population and the necessary services required in each of said several counties, to wit: In all counties having a population of less than 10,000 inhabitants according to the last preceding United States census, the salary of the county assessor shall be \$500 per annum. In all counties having a population of 10,000 and less than 15,000 inhabitants according to the last preceding United States census, the salary of the county assessor shall be \$600 per annum. In all counties having a population of 15,000 and less than 20,000 inhabitants according to the last preceding United States census, the salary of the county assessor shall be \$700 per annum. In all counties having a population of 20,000 and less than 25,000 inhabitants according to the last preceding United States census, the salary of the county assessor shall be \$850 per annum. In all counties having a population of 25,000 and less than 30,000 inhabitants according to the last preceding United States census, the salary of the county assessor shall be \$950 per

annum. In all counties having a population of 30,000 and less than 35,000 inhabitants according to the last preceding United States census, the salary of the county assessor shall be \$1,000 per annum. In all counties having a population of 35,000 and less than 100,000 inhabitants according to the last preceding United States census, the salary of the county assessor shall be \$1,200 per annum. In all counties having a population of 100,000 and over according to the last preceding United States census, the salary of the county assessor shall be \$1,900 per annum. And all such salaries shall be paid quarterly on the first day of April, July, October and December. (4 Burns Supp., §§530a.)

1. This section repeals so much of Section 135 as relates to salaries of county assessors.

[Acts 1891, p. 199. Approved and in force March 6, 1891.]

140. Duties of County Assessors—Deputies—

113. As soon as such County Assessor has qualified, he shall receive from the County Auditor all returns of real and personal property made by the Assessors of the several townships of the county, together with all assessment lists, schedules, statements, maps, and other books and papers filed with the Auditor by said Township Assessors. It shall be the duty of such County Assessor to make a careful examination of the tax duplicate of the county, and also of all other records and papers in the offices of the County Auditor, Treasurer, Recorder, Clerk, Sheriff and Surveyor, and to list and assess, at its true cash value, upon the proper Township Assessor's books and to the proper persons, all omitted assessable property, of every kind and nature whatsoever, including tax certificates, mortgages, debts, judgments, claims and allowances of courts and legacies and property in the hand of administrators, executors, guardians, assignees, receivers, trustees, and other fiduciaries. The valuation made on any omitted property by the County Assessor shall be entered in a separate column under the head of "Valuation by County Assessor" immediately after the column containing the valuation by the Township Assessor in the several lists and returns of said Township Assessors. The County Assessor shall have all the rights and powers given by law to Township Assessors for the examination of persons and property, and the discovery and assessment of property, and making lists and returns of the same. He shall, on or before the first Monday after the 4th day of July in each year, make returns to the County Auditor of all Township Assessor's books, returns, lists, schedules, maps, and other papers received by him from the Auditor, together with such additional lists, assessments, books and papers as he has made thereto; and all assessments so made by the County Assessor shall have the same force and effect as if

made in the first instance by the Township Assessor. It shall also be the duty of the County Assessor, at any time during the year, to list and assess upon the proper Assessor's books in the office of the County Auditor any omitted property that he may discover and which should be assessed; and the same shall be placed upon the duplicate by the Auditor, and the taxes thereon extended and collected as in other cases. The County Assessor is hereby authorized and required to advise and instruct all Township Assessors of his county as to their duties under the law, and for this purpose he shall visit each Township Assessor during the months of April or May in each year. The County Assessor is also given all the powers hereinafter given to County Auditors and Treasurers as to assessment of omitted property after the meeting and adjournment of the Board of County Review in each year, and all provisions of sections 142 and 182 of this act, as to notice or otherwise, so far as applicable, shall apply to such assessment by the County Assessor as if the same were made by the County Auditor or the County Treasurer. On order of the County Commissioners, duly entered of record at any regular or special meeting of the board, the County Assessor may appoint one or more deputies to serve such time, not exceeding thirty days in any one year, as the Commissioners shall direct, who shall have the same qualifications, possess the same powers and perform the same duties as the Assessor, subject to his control and direction. They shall receive such compensation as the County Commissioners shall fix, not to exceed two dollars per day. (3 Burns R. S. 1901, §§531.)

1. Sections 112 and 182.—Sections 142 and 182 are Sections 173 and 182 of this edition of the law.

2. County Auditor.—For power of the County Auditor to assess omitted property, see Sec. 173.

3. County Board of Review.—For power of the County Board of Review to assess omitted property, see Sec. 142.

4. County Treasurer.—For power of the County Treasurer to assess omitted property, see Sec. 182.

4a. Township Assessor.—For power of a Township Assessor to assess omitted property, see Sec. 134.

5. Power to Examine Persons.—County Assessors have the same power to examine persons as to property for taxation as Township Assessors, and persons who refuse to answer are subject to the penalty provided by Section 65. Burns v. State, 6 Ind. App. 385; 41 N. E. Rep. 143.

6. Notice—Appearance Without Notice.—Before the assessment of omitted property by the County Assessor the property owner should have notice, but an appearance by such owner to resist the assessment will be sufficient to confer jurisdiction over him. Deniston v. Terry, 141 Ind. 677; 41 N. E. Rep. 143.

7. Powers of County Assessors.—The tax laws of the State make it the duty of County Assessors to assess all property which has been omitted from taxation, and for that purpose he not only has the power expressly given him by statute, but also the power given to Township Assessors, County Auditors and Treasurers. State v. Real Estate, etc., Assn., 151 Ind. 503; 51 N. E. Rep. 1061.

8. Assessor's Statement.—The failure of the County Assessor, on listing

omitted property for taxation, to file in the County Auditor's office a statement of his reasons for listing the property, will not render the assessment invalid, where there is no other assessment against the owner of such omitted property. *Hunter Stone Co. v. Woodard*, 152 Ind. 474; 53 N. E. Rep. 947.

9. *Duty and Powers*.—It is not only the duty of the County Assessor and other taxing officers to search for, discover, list, and assess all omitted property subject to taxation for the current year, but for previous years, and in the performance of this duty such officers are authorized to use all the means and instrumentalities the law provides. *State v. Real Estate, etc., Assn.*, 151 Ind. 504; 51 N. E. Rep. 1061; *Crowder v. Riggs*, 153 Ind. 158; 53 N. E. Rep. 1019.

10. *Assessing Property Omitted Prior to 1891*.—County Assessors are authorized to assess property for taxation that was omitted from assessment for years prior to the taking effect of the Acts of 1891, by which the office of County Assessor was created. *Saint v. Welsh*, 141 Ind. 382; 40 N. E. Rep. 903.

11. *Injunction—Notice*.—The courts will not enjoin the assessment of property for taxation, or the collection of taxes, on the ground of insufficiency of notice, or other information or irregularities, where the property is taxable. Nor will the court restrain the taxing officers from placing upon the tax duplicate property alleged to have been omitted from taxation for certain years if taxable property belonging to the plaintiff was omitted from the tax duplicate in any of the years mentioned. *Crowder v. Riggs*, 153 Ind. 158; 53 N. E. Rep. 1019; *Hunter Stone Co. v. Woodard*, 152 Ind. 474; 53 N. E. Rep. 947; *Miller v. Vollmer*, 153 Ind. 26; 53 N. E. Rep. 940; *Reynolds v. Bowen*, 138 Ind. 434; 36 N. E. Rep. 750; 37 N. E. Rep. 962; *Jones v. Summer*, 27 Ind. 510; *Fell v. West*, 36 Ind. App. 20; 73 N. E. Rep. 719; *People's Gas, etc., Co. v. Harrell*, 36 Ind. App. 588; 76 N. E. Rep. 318.

12. *Lack of Notice—Injunction*.—If property is taxable, the want of notice in assessing it as omitted property will not entitle the owner to an injunction to restrain the collection of the taxes thereon if it in fact was taxable. *Crowder v. Riggs*, 153 Ind. 158; 53 N. E. Rep. 1019; *Hunter Stone Co. v. Woodard*, 152 Ind. 474; 53 N. E. Rep. 947; *Miller v. Vollmer*, 153 Ind. 26; 53 N. E. Rep. 940; *Reynolds v. Bowen*, 138 Ind. 434; 36 N. E. Rep. 750; 37 N. E. Rep. 962; *Fell v. West*, 36 Ind. App. 20; 73 N. E. Rep. 719.

13. *Notice Outside of County*.—The assessment officer is not required to go outside of his own county to give notice to any one of his intention to assess omitted property. *Buck v. Miller*, 147 Ind. 586; 45 N. E. Rep. 647; 47 N. E. Rep. 8.

14. *Constitutional—Notice—Non-Resident*.—The above section is constitutional, and can not be assailed for failure to provide notice to non-residents, since such assessment is not final and the resident is not deprived of his day in court. *Gallup v. Schmidt*, 154 Ind. 196; 56 N. E. Rep. 443; affirmed 183 U. S. 300; 22 Sup. Ct. Rep.

15. *Penalty and Interest*.—Under the tax statute penalties and interest can only be imposed for the non-payment of taxes after the property has been placed upon the tax duplicate, and there is no authority for adding the penalty and interest to omitted property placed upon the tax duplicate by the County Auditor which would have accrued if the property had been placed on the tax duplicates at the proper time and the taxes not paid. *Gallup v. Schmidt*, 154 Ind. 196; 56 N. E. Rep. 443; affirmed 183 U. S. 300; 22 Sup. Ct. Rep.

16. *Former Years—Present Statute*.—Under former statutes there was no power to assess omitted property for any except the current year. *State v. Howard*, 80 Ind. 460; *Stockmer v. Robbins*, 80 Ind. 108; *Scott v. Knightstown*, 84 Ind. 108; *Heller v. Knightstown*, 84 Ind. 356; *Boyd v. Murphree*, 100 Ind. 570; *Hamilton v. Amsden*, 88 Ind. 304; *Vogel v. Vogler*, 73 Ind. 353; *Lang v. Clapp*, 103 Ind. 17; 2 N. E. Rep. 197; *McKeen v. Haskell*, 108 Ind. 97; 8 N. E. Rep. 901; *Board v. Armstrong*, 91 Ind. 523; *Donch v. Board*, 4 Ind. App. 374, 379; 30 N. E. Rep. 204; *Hennel v. Board*, 132 Ind. 32; 31 N. E. Rep. 462. But under the present statute taxes on omitted property for any past year or number of years on the current year can be assessed. *State v. Real Estate, etc., Assn.*, 151 Ind. 502; 51 N. E. Rep. 1061; *State v. Halter*, 149 Ind. 292; 47 N. E. Rep. 665; *Crowder v. Riggs*, 153 Ind. 158; 53 N. E.

Rep. 1019; *Saint v. Welsh*, 141 Ind. 382; 40 N. E. Rep. 741; *Gallup v. Schmidt*, 154 Ind. 196; 56 N. E. Rep. 443.

17. *Presumptions of Regularity*.—All presumptions are to be indulged in favor of the correctness of the proceedings of the County Assessor in assessing omitted property, and the error, if any, must be pointed out by the party complaining of it. *Buck v. Miller*, 147 Ind. 586; 45 N. E. Rep. 647; 47 N. E. Rep. 8; 37 L. R. A. 334; 62 Am. St. Rep. 436; *Fell v. West*, 35 Ind. App. 20; 73 N. E. Rep. 719.

18. *Notice to Non-Resident Executor*.—The official residence of an executor, so far as the taxation and administration of the assets of the estate are concerned, is in the county of his appointment, and notice to appear before the county assessing officers and show cause why property of the estate should not be added to the tax duplicate is not void for the reason that such executor resides in another State. Such an executor can not assail the constitutionality of the above section on the ground that it attempts to provide for the assessment of omitted property owned by non-residents of the State, without affording such non-resident notice or a day in court. *Gallup v. Schmidt*, 154 Ind. 196; 56 N. E. Rep. 443; affirmed 183 U. S. 300; 22 Sup. Ct. Rep.

19. *Oath May Administer*.—The Assessor and his deputies have authority under the statute to administer all necessary oaths in connection with tax lists. *State v. Reynolds*, 108 Ind. 353; 9 N. E. Rep. 287.

20. *Mandamus*.—Previous to the amendment of section forty in 1901, it was held that the officers of a building association could be compelled by mandamus to permit the County Assessor to examine its books, in order to see if any person named in the application owned building association stock. *State v. Real Estate, etc., Assn.*, 151 Ind. 502; 51 N. E. Rep. 1061. See *State v. Workmen's, etc., Assn.*, 152 Ind. 278; 53 N. E. Rep. 168.

21. *Tax Permits—Duty of Officers to Search for Property*.—It is not the duty of taxing officers of the county to hunt for property omitted from taxation, and the Board of County Commissioners may legally enter into a contract for the employment of persons to search for such property in order that the same may be placed upon the tax duplicate. Such a contract is not void because of the amount of compensation agreed upon to be paid, where no fraud or collusion is shown. *Freener v. Litsey*, 30 Ind. App. 399; 66 N. E. Rep. 82; *City of Richmond v. Dickinson*, 155 Ind. 345; 58 N. E. Rep. 260. See *Boyd v. Dickinson*, 153 Ind. 682; 53 N. E. Rep. 929. The case of *State v. Ilyes*, 87 Ind. 405 is no longer an authority in this State, the decision being based upon a statute not now in force. See §255.

22. *Assessing Back to 1872*.—Tax officers may go back at least to 1872 in placing omitted property upon the tax duplicate. *Smith*, 1894, p. 45.

23. *Increasing Value*.—A county assessor can not increase the valuation of property listed and assessed in previous years. *McConnell v. Hampton* (Ind. Sup.), 73 N. E. Rep. 1092; *Parkinson v. Thompson*, 104 Ind. 609; 73 Ind. 100; *Flower v. Sherwood*, 128 Ind. 495; 28 N. E. Rep. 71; *Douch v. Board*, 4 Ind. App. 374; 30 N. E. Rep. 204.

24. *Enjoining Assessor*.—A county assessor can not be enjoined on the mere supposition that he may exceed his authority in making an assessment. *McConnell v. Hampton*, 104 Ind. 547; 73 N. E. Rep. 1092.

[Acts 1901, p. 172. Approved and in force March 7, 1901.]

141. Annual Meetings.—

1. The State Board of Tax Commissioners shall annually call a meeting of the County Assessors of the State, to be held at such time and place as the said Board may select, and to continue not longer than three days in any one year; that each Assessor attending such meeting shall be allowed three cents per mile for the distance actually traveled by the most expeditious railroad

route in going to and returning from such meeting, and three dollars per day for expenses while attending said meeting, not to exceed three days in any one year. All of said payments shall be made by the County Treasurer on a warrant issued by the County Auditor, and said County Auditor before issuing any such warrant shall require said County Assessor to make a verified statement of the number of days he attended and the distance he traveled. (3 Burns R. S. 1901, §8531e.)

ARTICLE 14—COUNTY BOARD OF REVIEW.

142. How Organized—Meetings—Powers. 143. Duties and Powers. 144. Auditor Must Keep Record.

[Acts 1891, p. 199. Approved and in force March 6, 1891.]

142. How Organized—Meetings—Fowers—Quorum—

114. There shall be an annual board for the review of assessments and the equalization of the valuation of real and personal property in each county. Such board shall be composed of the County Assessor, County Auditor and County Treasurer, and two freeholders to be appointed by the Judge of the Circuit Court, who shall each be paid out of the county treasury, the sum of \$3 for each and every day while they are acting as members of said board. The County Assessor shall be president and the County Auditor secretary of said board, which shall be known as the "County Board of Review." The board shall meet for assessment, review and equalization of taxes at the room of the County Commissioners, in the courthouse of each county on the first Monday in June annually. Two weeks' previous notice of the time, place and purpose of such meeting shall be given by the County Auditor in some newspaper of general circulation, printed and published in the county; or if no newspaper be published in the county, then by posting up notices in three public places in each township in the county. Such board shall have the power to hear complaints of any owner of personal property, except "railroad track" and "rolling stock" of railroads, to equalize the valuation of property and taxables made subsequent to the preceding first day of March, and to correct any list of valuation as they may deem proper. It shall also have the power to equalize the valuation made by the Assessors, either by adding to or deducting therefrom such sums as are necessary to fix the assessment at the true cash value. In all cases where the County Board deems it necessary to add omitted property, or to increase the valuation thereof by the Assessor, the County Auditor shall cause the names of the persons to whose list property is to be added or the valuation of whose property is to be increased, to be inserted in the notice hereinbefore provided for;

or such board may, at its option, cause to be served upon the person to whose list property is to be added, or the valuation of whose property is to be increased, a written notice that it is proposed to revise or correct his list, but such notice need not specify the particulars in which it is proposed to revise or correct the list or returns, nor shall it be necessary to specify particularly in the published notice, but it shall be sufficient in any or all such notices to state generally that it is proposed to correct or revise the returns, list, statement or schedule of the person or persons named; when such notice or notices are ordered by said board to issue, they shall be served by such County Assessor. In case such County Assessor neglects to serve the written notices herein provided for, they shall be issued by the Auditor to the Sheriff of the county, who shall serve the same at least three days before the matter comes up for hearing. In case the board adjudged that the returns, statement or schedule list shall be revised or corrected by adding property thereto, or by increasing the valuation of any property therein described, the taxpayer whose list, return, statement or schedule it adjudged, shall be revised or corrected as aforesaid, shall be liable for all costs occasioned by such revision or correction. The board shall correct all errors in the names of persons, in the description of property upon said list, and in the assessment and valuation of property thereon, and shall cause to be done whatever else may be necessary to make said list and returns of assessments comply with the provisions of this act. It shall pass upon each valuation, and may, on sufficient cause being shown, or on its own motion, correct the assessment or valuation of any property in such manner as will, in its judgment, make the valuation thereof just and equal, and enter the valuation, when so changed by it in a separate column. A majority of said board shall constitute a quorum for the transaction of business, and may decide any question. Before entering upon their duties the members of the Board of Review shall each take and subscribe an oath for the faithful and impartial discharge of their duties as members of said board, which oath shall be administered by the Auditor to the Assessor, Treasurer and freeholders, and by the Assessor to the Auditor, and shall be filed with the Auditor, and shall be in the form following:

State of Indiana, _____ County, ss.:

I, _____, do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of Indiana, and that I will faithfully and impartially discharge my duty as a member of the Board of Review for said county; that I will, according to my best knowledge and judgment, assess, review and equalize the assessment of all the property of said county, and that I will in no case assess any property at more

or less than its true cash value, as such value is defined by Section 53 of the act concerning taxation, so help me God.

Subscribed and sworn to this _____ day of _____,
189—.

At such meeting the County Auditor shall submit to the Board of Review the assessment list of the county as returned by the Township Assessors and added to and returned by the County Assessor for the current year, and the board shall proceed to examine and review the same. In addition to his other duties, it will be the duty of the County Assessor to report to the Board of Review for the action of the board all corrections and changes in the returns and assessments of the Township Assessor, which in the judgment of the County Assessor, ought to be made. The Board of Review will consider and act upon all recommendations made by the County Assessor, and will also, of its own motion or on sufficient cause being shown by any person, add to the assessment list the names of persons, the value of personal property and the description and value of real estate liable to assessment and omitted on said lists. The board shall correct all errors in the names of persons, in the descriptions of property upon said lists in the assessment and valuation of property thereon, and shall cause to be done whatever else may be necessary to make said lists and returns of assessments comply with the provisions of this act. The board shall pass upon each valuation, and enter the valuation as fixed by it, in a separate column. The list, as prepared by the Assessors, shall stand as approved and adopted as the act of the Board of Review, except as changed by a vote as herein provided. The board may, on sufficient cause being shown or on their own motion, correct the assessment of valuation of any property in such manner as will in their judgment make the valuation thereof just and equal. To that end the board may examine, on oath, any person touching the matter. Any member of said board may administer such oath. Said board is hereby given full power to send for persons and papers and to compel witnesses to answer under oath, touching any question concerning the assessment and valuation of property. The Sheriff of the county shall serve all process not served by the County Assessor, and obey all orders of said board. Nothing, however, in this section shall be taken or construed to authorize the board to assess any property at more or less than its true cash value as the same is defined in Section 53 of this act. Where it appears from the returns of the Assessors or from the corrections made in said return by the board, that any property owner has *bona fide* indebtedness, the same shall be deducted from the amount of his credits, listed in the county, and he shall be assessed only on the residue of his credits, which

residue shall be fixed by the Board of Review. (As amended February 25, 1903. Acts 1903, p. 49; 4 Burns Supp., §8532.)

a. *Section 53.*—Section 53 referred to above is Section 53 of this edition of the tax laws.

1. *Omitted Property, County Assessor.*—For power of County Assessor concerning omitted property, see Sec. 140.

2. *Omitted Property, County Auditor.*—For power of County Auditor concerning omitted property, see Sec. 173.

3. *Omitted Property, County Treasurer.*—For power of County Treasurer concerning omitted property, see Sec. 182.

3a. *Township Assessors.*—For powers of Township Assessors to list omitted property, see Sec. 134.

4. *Board Must Organize.*—A Board of Review must meet and organize as the law requires, or its acts will be void. *Hyland v. Brazil, etc., Co.*, 128 Ind. 335; 29 N. E. Rep. 872; *Eaton v. Union, etc., Bank*, 141 Ind. 159; 40 N. E. Rep. 668.

5. *Notice to Property Owner.*—County Boards of Review have no power to change the valuation of property for taxation without notice to the property owner. *Kuntz v. Sumption*, 117 Ind. 1; 19 N. E. Rep. 474; 2 L. R. A. 655. But if it does so, and the valuation does not exceed the actual value of the property assessed, the tax for that reason can not be enjoined. *Fell v. West* (Ind. App.), 73 N. E. Rep. 719; *Crowder v. Riggs*, 153 Ind. 158, 53 N. E. Rep. 1019; *Miller v. Vollmer*, 153 Ind. 26; 53 N. E. Rep. 949; *Hunter Stone Co. v. Woodard*, 152 Ind. 474; 53 N. E. Rep. 947.

6. *Publication Not Sufficient.*—A general notice to the public, by publication or posting, of the time, place and purpose of the meeting of the Board of Review, is not such notice to an individual taxpayer as is required to authorize a change in the valuation of his property as returned by the Assessor. *Kuntz v. Sumption*, 117 Ind. 1; 19 N. E. Rep. 474; 2 L. R. A. 655.

7. *Actual Notice Not Sufficient.*—The fact that the taxpayer actually has notice of the proceeding is not sufficient to authorize a disposition of his individual property rights, as notice must be given to him under the statute providing for it, or it will be unavailing. *Kuntz v. Sumption*, 117 Ind. 1; 19 N. E. Rep. 474; 2 L. R. A. 655.

9. *Oaths—Examination of Witnesses.*—A County Board of Review has the power, and it is one of its duties, to add and assess omitted property, and to investigate and determine whether a citizen is the owner of property, subject to taxation, which he has omitted from his tax lists. To that end, it may examine witnesses; each member having power to administer all necessary oaths in the discharge of the duties of the board, and a prosecution for perjury may be predicated upon testimony given in such cases. *State v. Wood*, 110 Ind. 82, 85; *Burns v. State*, 5 Ind. App. 385; 31 N. E. Rep. 547.

10. *Description of Property in Notice.*—The notice of intention to assess omitted property need describe the property only in general terms. *Reynolds v. Bowen*, 138 Ind. 434, 440; 36 N. E. Rep. 756; 37 N. E. Rep. 962; *Delphi v. Bowen*, 138 Ind. 235; 36 N. E. Rep. 761.

11. *Notice to Administrator.*—Where property of a decedent has been omitted from taxation, the administrator is the person to be notified before adding and assessing such omitted property. *Reynolds v. Bowen*, 138 Ind. 434, 440; 36 N. E. Rep. 756; 37 N. E. Rep. 962; *Buck v. Miller*, 147 Ind. 586; 45 N. E. Rep. 647; *Gallup v. Schmidt*, 154 Ind. 196; 56 N. E. Rep. 443.

12. *Errors—Collateral Attack.*—The powers conferred upon County Boards of Review are of a quasi judicial character, and their judgments are not open to collateral attack. If errors or irregularities are committed, they must be corrected in the mode pointed out by statute, and if not so corrected, they are conclusive, as the courts have no power to control the discretion of such boards. *Biggs v. Board*, 7 Ind. App. 142; 34 N. E. Rep. 500; *Jones v. Rushville Nat. Gas Co.*, 135 Ind. 595; 35 N. E. Rep. 390; *Senour v. Matchett*, 140 Ind. 636; 40 N. E. Rep. 122.

13. *Stock—Collateral Attack.*—A County Board of Review has original exclusive jurisdiction of the assessment of the capital stock of ordinary domestic corporations where the value of such stock exceeds the value of the tangible property of such corporation, and whether the value of such stock exceeds the value of the tangible property is a question for such board to decide, and such decision is not subject to be questioned collaterally. *Jones v. Rushville Nat. Gas Co.*, 135 Ind. 595; 35 N. E. Rep. 390; *Parkinson v. Jasper County Tel. Co.*, 31 Ind. App. 135; 67 N. E. Rep. 471; *Pell v. West*, 35 Ind. App. 20; 73 N. E. Rep. 719.

14. *Review—Appeal—Collateral Attack.*—A County Board of Review has power to determine whether a taxpayer has temporarily converted his taxable money into such legal tender notes for the express purpose of evading the payment of taxes thereon, and the action of such board could only be reviewed by an appeal or some other direct proceeding. *Senour v. Matchett*, 140 Ind. 336; 40 N. E. Rep. 122.

15. *Notice—Appearance of Cashier of Bank.*—A County Board of Review has no authority to raise the assessment of property as fixed and returned by the Assessor, without giving the notice required by statute to the taxpayer whose assessment is increased, unless such board obtains jurisdiction over such taxpayer by an appearance before it, and the appearance of a cashier of a bank before it for the purpose of testifying at its instance, is not such an appearance by such bank as will authorize it to increase the assessment against such bank without giving the notice required by the statute. *Eaton v. Union, etc., Nat. Bank*, 141 Ind. 139; 40 N. E. Rep. 668.

16. *Appeal—Blanks.*—The law grants an appeal from a County Board of Review as a matter of right, and if the taxpayer fails to exercise it in any way, the neglect of the State Tax Board to provide regulations and furnish blanks is not an available excuse for his failure to demand an appeal. *Senour v. Matchett*, 140 Ind. 636; 40 N. E. Rep. 122.

17. *Examination of Books.*—Before the amendment of section forty it was held that a County Board of Equalization had power to inspect and examine the books and papers of banks and other corporations, and might require witnesses to testify, for the purpose of learning whether property had been omitted from assessment before giving any notice to any taxpayer that such board was about to assess property omitted by him; and on the appearance of a witness before such board who refused to answer proper questions, such board might obtain a mandate from the Circuit Court requiring him to answer such questions, and on his refusal to obey such mandate, he might be punished as for a contempt. *Satterwhite v. State*, 142 Ind. 1; 40 N. E. Rep. 654.

18. *Examination of Books.*—Before the amendment of section forty it was held that mandamus might issue against a building and loan association and its officers to compel them to allow an inspection of the association's books by the County Assessor, for the purpose of determining whether any of the stock in the association has been omitted from taxation. *State v. Real Estate Building and Loan Association*, 151 Ind. 502; 51 N. E. Rep. 1061.

19. *Appearance Waives Notice.*—The voluntary appearance of the person to be assessed with omitted property before the County Board of Review will be a waiver of the right to notice. *International, etc., Ass'n*, 30 Ind. App. 2; 65 N. E. Rep. 297; but where a bank cashier was called before the board, not for the purpose of acquiring jurisdiction over the bank, but for the purpose of testifying as a witness in relation to the affairs of such bank, and it appeared that the cashier did not submit to the jurisdiction of the board, or voluntarily acquiesce in the assumed right of the board to raise the valuation of the bank's list, such presence, it was held, before the board did not amount to a waiver of the notice required by statute, and that the board did not acquire jurisdiction over the bank. *Eaton v. Union, etc., Bank*, 141 Ind. 139; 40 N. E. Rep. 668. Yet where the secretary of a building association voluntarily appeared before the Board of Review, submitted to an examination upon the question of increasing the assessment of the association, protested against the increase, and afterward notified the president and directors of the action of the tax board, who discussed the same and did not take an appeal to the

State Board of Tax Commissioners, as they had the right to do, it was held that such action amounted to a waiver of notice and a submission to the jurisdiction of the board, and the association was bound by its action. *International, etc., Ass'n v. Board*, 30 Ind. App. 12; 65 N. E. Rep. 297.

20. *Proclamation Concerning Publication of Notice and Organization of Board.*—Unless otherwise appearing, it will be presumed that notice was given according to law; and where it appears that the Board of Review was in session it will be presumed that it was organized and convened according to law. *Smith v. Itude*, 131 Ind. 150; 30 N. E. Rep. 947; *Brunson v. Starbuck*, 32 Ind. App. 457; 70 N. E. Rep. 163; *Pell v. West*, 35 Ind. App. 20; 73 N. E. Rep. 719.

21. *Notice to Insane Person—Guardian.*—If an insane person has no guardian, notice may be given to him and the assessment will be prima facie valid; if he has had a guardian appointed, notice should be given to such guardian. *Hennel v. Board*, 132 Ind. 32; 31 N. E. Rep. 462.

22. *Notice—Equalization of Township—Constitutional.*—The valuation of each taxpayer's property within a township or division of a township may be increased by the County Board of Review without notice other than that given by the law itself; and the statute for that reason can not be held invalid. *Hubbard v. Goss*, 157 Ind. 485; 62 N. E. Rep. 36.

23. *Part of Assessment Illegal—Injunction.*—Where part of an increased assessment is legal and part illegal, and there is no means of ascertaining the amount of the legal portion, the whole increase is invalid. *Hart v. Smith*, 159 Ind. 182; 64 N. E. Rep. 609.

24. *Listing in Wrong Township—Appeal—Injunction.*—The County Board of Review has no power to list without notice notes and mortgages to the owner in a township of which he is not a resident; and if it do, the County Auditor may be enjoined from placing them on the tax duplicate. He need not appeal to the State Board of Tax Commissioners to have the error corrected. The listing is void. *Stephen v. Smith*, 30 Ind. App. 120; 65 N. E. Rep. 546.

25. *Jurisdiction—Collateral Attack—Injunction.*—"A County Board of Review is a tribunal which possesses quasi judicial powers, and to it, by law, is given exclusive original jurisdiction over the subject-matter of correcting and revising tax assessments. If it once obtains jurisdiction over the person whose assessment is in controversy, its action in the matter, whether right or wrong, is binding until set aside or vacated by some direct attack." *Stephens v. Smith*, 30 Ind. 120; 65 N. E. Rep. 546; *Senour v. Matchett*, 140 Ind. 636; 40 N. E. Rep. 122; *Jones v. Rushville, etc., Gas Co.*, 135 Ind. 595; 35 N. E. Rep. 390. "A County Board of Review and the State Board of Tax Commissioners are created and clothed with judicial powers, and especially charged with the duty of bringing about uniformity and equality of taxation. The action of these boards is judicial in its character, and their judgments are not open to collateral attack. If errors or irregularities are committed, they must be corrected by the mode pointed out by statutes. If not so corrected they are conclusive whatever errors may have been committed in the assessment. Courts have no power to control their discretion or take upon themselves the functions of a revising and qualifying board." *Jones v. Rushville, etc., Co.*, supra.

26. *Increasing Valuation for Past Years.*—Under the assertion of the power to list and value for taxation omitted property, the County Board of Review can not reassess property assessed in previous years because of undervaluation in such previous years, nor make an original assessment of property for previous years as property omitted from taxation in such years, nor increase the assessment of property for the current year because of omission of previous years. *Parkinson v. Jasper County Tel. Co.*, 31 Ind. App. 135; 67 N. E. Rep. 471.

27. *Omitted Property in Past Years.*—The statute "prescribing the powers and duties of the County Board of Review, provides for the addition by that board of property omitted from the list of that year, but does not provide for adding property omitted in other years." *Parkinson v. Jasper County Tel. Co.*, 31 Ind. App. 135, 143; 67 N. E. Rep. 471. "The County Board of Review

has power to add omitted property, but only property omitted from the lists of current year." *Parkinson v. Jasper County Tel. Co.*, supra. See *Brunson v. Starbuck*, 32 Ind. App. 437; 70 N. E. Rep. p. 195.

28. *County Auditor's Per Diem*.—A County Auditor is entitled to \$3.00 per day for each day he serves as a member of the County Board of Review. *Seller v. State*, 160 Ind. 605; 65 N. E. Rep. 922; 66 N. E. Rep. 946; 67 N. E. Rep. 448.

29. *Notice of Change in Township Assessment*.—Aside from the general notice provided by law for the meeting of county boards of review, no notice is required for such boards to make a general change in the assessment for a given township. *Smith*, 1892, p. 77.

30. *Raising Valuations of Part of Township*.—The Board of Review has the power to raise or lower the valuation of a particular division of a township. *Inghard v. Goss*, 157 Ind. 485; 62 N. E. Rep. 36.

31. *Presumption*.—The presumption is that the Board of Review properly performed their duty; and one claiming that a raise in the valuation of his property was illegal has the burden to show its illegality. *Fell v. West*, 35 Ind. App. 20; 73 N. E. Rep. 719.

32. *County Assessor's Pay*.—The county assessor, while serving as a member of the Board of Review, was entitled, prior to 1905, to his per diem, but not pay both as county assessor and as a member of the Board of Review, or \$6 per day. *Daily v. Board*, 165 Ind. 90; 74 N. E. Rep. 377. He is now on an annual salary. Sec. 140.

143. Duties and Powers—

115. It shall be the duty of such board at such meeting to inquire as to the valuation of the various classes of property in the respective townships and divisions of the county, and to make such changes, whether by way of increase or decrease, in such valuation as may be necessary to equalize the same as between the townships or divisions of townships, and to determine the rate per cent. to be added or deducted in order to make a just and equitable equalization in the respective townships and divisions, so as to conform throughout the county to a just and equitable standard, reference being had to the natural and artificial characteristics and surroundings, and other elements of value. Such board shall also have power, in proper cases, to reduce or increase the valuation of any particular tract or lot. Such board may consider lands, town lots and city lots as separate classes, if necessary, for the purpose of equalization, and determine a per cent. of addition or reduction for such or any of said classes within the respective townships, as between the several townships or other divisions. The board shall have no power to reduce the aggregate valuation of all the townships below the true cash value, nor increase the same beyond the amount actually necessary for a proper and just equalization. If the board shall find the aggregate assessment is too high or too low, or is generally so unequal as to render it impracticable to equalize the same, it may set aside the assessment of the whole county, or of such township or townships therein, and order a new assessment, with instructions to the Assessors to increase or diminish the aggregate assessment of their respective townships in

such amount as the board may deem right and just and consistent with law. The duration of the session of the Board of Review shall not exceed twenty days in counties having a population of less than 20,000 according to the last preceding United States census; and in counties having a population of more than 20,000 according to the last preceding United States census, the duration of the session of said board shall not exceed thirty days, except in the years for the assessment of real estate. In years for the assessment of real estate the session of the Board of Review, in counties having a population of less than 20,000 according to the last preceding United States census, shall not exceed thirty days, and in counties having a population of more than 20,000 and less than 50,000 according to the last preceding United States census, the duration of the session of said board shall not exceed forty days. In counties having a population of more than 50,000 according to the last preceding United States census, the duration of the session of said board shall not exceed forty-five days. (As amended February 25, 1903. Acts 1903, p. 49; 4 Burns Supp., §8533.)

1. *Length of Session—Sundays*.—In computing the time in which a County Board of Review may continue in session, intervening Sundays are to be included, and any action taken by such board after the time fixed by law for the termination of its session is void. *Yocum v. First Nat'l Bank*, 144 Ind. 272; 43 N. E. Rep. 231; *State v. McGinnis*, 34 Ind. 452.

2. *County Altering Assessments*.—Courts can not alter the assessments as fixed by Boards of Review in the absence of fraud or mistake. *Rhoads v. Cushman*, 45 Ind. 85.

3. *Collateral Attack*.—The powers conferred upon County Boards of Review are of a quasi judicial character, and their judgments are not open to collateral attack. If errors or irregularities are committed, they must be corrected in the mode provided by the statute, and if not so corrected, the action of such board becomes conclusive, as the courts have no power to control the discretion of such board. *Jones v. Rushville Nat. Gas. Co.*, 135 Ind. 505; 35 N. E. Rep. 390; *Sennour v. Matheert*, 140 Ind. 636; 40 N. E. Rep. 122; *Biggs v. Board*, 7 Ind. App. 142; 34 N. E. Rep. 500; *Fell v. West*, 35 Ind. App. 20; 73 N. E. Rep. 719.

4. *Adjournment*.—A County Board of Review should remain in session, and not finally adjourn, until the time fixed by law for the termination of its session has expired. (*State Board of Tax Commissioners*.)

5. *Equalization of Assessments, Right of County Board*.—The County Board has the right to equalize the real and personal property of a township by classes without giving notice. *Taylor*, 1900, p. 135.

6. *Equalization, Assessment Made by Assessor to Be Set Aside*.—Where inequalities are so general and flagrant in a township as to render the correction impracticable, it should be set aside and the County Assessor should be required to do the work over as provided by law. *Smith*, 1892, p. 77.

7. *Equalization, Power of Township Assessor*.—The Township Assessor can not raise the assessment of real estate for the equalization of taxes without notice to the taxpayer whose assessment is raised. *Taylor*, 1900, p. 60.

8. *Equalization, Power of State Board of Tax Commissioners*.—Power to equalize, correct and add to assessment lists is fully conferred upon local Boards of Review. The State Board of Tax Commissioners possess all the duties and powers of local boards, and additional powers. *Smith*, 1892, p. 110.

10. *Action After Time for Session has Expired*.—The Board of Review can not act after the time for holding its sessions has expired; and if it attempts

to perform any act after that time its action will be void. *Yocum v. First National Bank*, 144 Ind. 272; 43 N. E. Rep. 231; *State v. McGinnis*, 34 Ind. 45; *Shoemaker v. Board*, 36 Ind. 175; *Jeffersonville, etc., R. R. Co. v. McQueen*, 49 Ind. 64; *Newsom v. Board*, 92 Ind. 229.

144. Auditor Must Keep Record—

116. The County Auditor shall keep full and accurate minutes of the proceedings of the Board of Review. (*Burns R. S. 1901, §8534.*)

ARTICLE 15—STATE BOARD OF TAX COMMISSIONERS.

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| 144. Tax Commissioners—Terms—Bond. | 160. Abstract of Assessment—Duty of County Auditor. |
| 145. Form of Oath. | 161. Rules of Equalization. |
| 147. Vacancies. | 162. Counties, How Equalized. |
| 148. Room for Meetings. | 163. Equalization of Counties. |
| 149. Salary and Expenses. | 164. County Auditor—Notice to Taxpayers—County Commissioners. |
| 150. When Appointive Members Perform Duties of Board. | |
| 151. Meeting—Assessments—Powers. | 165. Hearings, Who May Appear. |
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| 154. Reports of Auditor of State. | 168. Railroad Property—Assessment. |
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| 158. Appeals from County Board of Review. | 172. Reports Published. |
| 159. Duty as to Land. | |

[Acts 1907, p. 131. Approved and in force March 2, 1907.]

145. Tax Commissioners—Terms—Bonds—

Three tax commissioners to be appointed by the Governor, each for a term of four years, not more than two of whom shall belong to the same political party, who, together with the Secretary of State and the Auditor of State, the last two of whom shall be ex officio members, shall constitute and be a board to be designated the "State Board of Tax Commissioners," who shall have and perform the duties and have the powers specified by law. The Governor shall commission the commissioners so appointed as aforesaid, and before entering upon the discharge of their official duties they shall each execute a bond, payable to the State of Indiana, in the penal sum of ten thousand dollars (\$10,000), with sureties to the approval of the Governor, for the faithful discharge of their official duties, and they shall each take and subscribe an oath of office, which oath shall be endorsed upon their official bond, which bond and oath when so executed shall be filed in the office of the Secretary of State: *Provided*, That the two tax commissioners now commissioned and serving under appoint-

ment by the Governor shall continue to serve for and during the term for which they were appointed.

1. Vacancies.—See §147.

[Acts 1891, p. 199. Approved and in force March 6, 1891.]

146. Form of Oath—

130. The several persons constituting the Board, as herein provided, before entering upon the discharge of their duties as members of said Board, shall each take and subscribe an oath for the faithful and impartial discharge of their duties as members of such Board, which oath, together with the oath of the secretary, shall be filed and preserved with the proceedings of the Board. Which oath shall be in the form following, to wit:

STATE OF INDIANA,

Marion County, ss:

I, _____, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Indiana; that I will faithfully and impartially discharge my duties as a member of the State Board of Tax Commissioners, that I will, according to my best knowledge and judgment, assess and equalize the property of the several counties of this State, and that I will in no case assess any property at more or less than its true cash value, as the same is defined in section 53 of the act concerning taxation, so help me God.

Subscribed and sworn to this _____ day of _____, 189—.

(3 Burns R. S. 1901, §8548.)

147. Vacancies—

127. In case a vacancy shall occur by reason of the death, resignation or removal of either of the Commissioners specially chosen to act as such, the Governor shall appoint a successor to fill out the unexpired term of the officer whose office is thus made vacant. And in such appointment the Governor shall appoint a person from the same political party as the officer whose office is thus made vacant. (3 Burns R. S. 1901, §8545.)

148. Room for Meetings—

128. It shall be the duty of the Custodian of Public Buildings to furnish a suitable room in the Capitol building, and the Auditor of State shall provide all such printing and stationery, as may be necessary for the transaction of the business of said board. (3 Burns R. S. 1901, §8546.)

1. Room.—See Sec. 151.

[Acts 1907, p. 131. Approved and in force March 2, 1907.]

109. Salary and Expenses—

2. The members of said board, except the Secretary of State, and the Auditor of State, shall each receive as compensation for his services the sum of three thousand (\$3,000) dollars per year, payable quarterly out of the appropriations to be made for that purpose. They shall also receive traveling and other expenses actually paid and necessary to the performance of the duties of their office, which expenses shall be itemized by the person incurring the same, and when the account of the same is approved by the Auditor of State, it shall be paid, such expenses not to exceed one thousand dollars (\$1,000) per annum, each.

1. *Expenses.*—See Sec. 151, note 17.

110. When Appointive Members Perform Duties of Board—

3. The duties imposed by law upon said board so far as the same can be consistently done, shall be done and performed by the three members of the board specially chosen to act as such, and the Auditor of State and the Secretary of State shall only be required to sit with the board and take part in its proceedings when performing the duties required by law of the board as such, and at such other times and under such other circumstances as may be necessary.

1. *Quorum.*—See Secs. 153 and 150.

111. Meetings—Assessments—Powers—

4. Said State Board of Tax Commissioners shall annually convene in the State House, in a room to be provided therefor, on the first Monday in April of each year, for the purpose of assessing railroad property, denominated railroad track and improvements thereon, and rolling stock and all property belonging to the telegraph, telephone, palace car, sleeping car, drawing-room car, dining-car and express and fast freight joint stock association companies, copartnerships and corporations transacting business in the State of Indiana, and the property of all other persons, copartnerships, associations or corporations required by law to be assessed by the State Board of Tax Commissioners, and shall devote such time as shall be necessary to make such assessments not exceeding, however, fifty (50) days. They shall reconvene on the first Tuesday after the first Monday of July following, for hearing appeals and applications for revisions; for the purpose of hearing complaints or applications for change in the assessments made by the owners of railroad property and all other persons, partnerships, associations or corporations whose assessments have been fixed at the first session in this section provided for,

but such session shall not exceed twelve (12) days. They shall reconvene on the Monday next succeeding said second session for the purpose of hearing appeals and applications for revision of assessments which, by law, they are required or permitted to make, and for the purpose of equalizing the assessment of all property, real or personal, the assessment or equalization of which, by said board, is provided for by law. During the years when they are required to equalize real estate they shall remain in session such length of time as the business may require, not exceeding twenty (20) days, and not exceeding fifteen (15) days in other years. Before adjourning said first session said board shall designate in what manner parties desiring to be reheard as to the assessments made, shall apply for relief, and such persons may be heard either upon printed or written petitions with accompanying affidavits and exhibits, or upon oral testimony, as the board at its first session may order, or the board may, at its discretion, at its second session, permit the hearing of oral or written testimony in case it shall appear to the board that such course will be more satisfactory. The assessment made at the first session of the board shall stand as the assessment by the board unless application is filed with said Auditor of State for the reassessment, or for relief from the original assessment at least ten (10) days before said second session, and the assessment when finally determined by said board, shall stand as the final assessment of such persons, and be certified to the proper official by the Auditor of State. Said board shall organize on the first day of the first session of the board each year with the Secretary of State as chairman, and the Deputy Auditor of State, or in his absence one of the clerks in the office of Auditor of State, to be designated by him, shall act as secretary of the board. The said State Board of Tax Commissioners is hereby given the powers given to county boards of review. They shall not be bound by any reports or estimates of railroad, real estate or other property as returned to the county auditors, or to the Auditor of State, or certified to the Auditor of State in connection with appeals or applications for revision, review or assessment, but shall appraise and assess all property coming before them for assessment, directly or indirectly, at its true cash value as defined by an act concerning taxation, approved March 6, 1891, and acts amendatory thereof, according to their best knowledge and judgment. They shall have power to send for persons, books and papers, to examine records, hear and question witnesses. The State Board of Tax Commissioners shall have power to issue subpoenas duces tecum, and to compel the attendance of witnesses, and the production of such books, papers and records as, in the judgment of the board, is necessary to a full and

complete exercise of the powers vested in said board, and to use the same in evidence. It shall have power to subpoena, swear and examine witnesses relative to any matter in controversy before said board, and any member of the board may administer an oath to such witness or witnesses. The sheriff of the county shall serve any order, subpoena or process of the board and receive such compensation therefor as is now provided by law. The sheriffs of the several counties of the State shall serve all process and execute all orders of the board. Any member of the board may administer an oath touching all matters under investigation. All necessary costs and expenses of said board shall be paid out of the State treasury upon warrants drawn by the Auditor of State when the same shall have been allowed by the board.

1. *Room*.—See Sec. 148.

2. *Punishing Contempts*.—The Legislature can not confer upon the State Board of Tax Commissioners the power to punish persons for contempt who fail to appear before such board in obedience to its process and answer such questions as may be propounded by such board or under its direction. *Langenberg v. Decker*, 131 Ind. 471; 31 N. E. Rep. 90; 10 L. R. A. 108.

3. *Original Jurisdiction*.—The clause in the above section reading: "The said State Board of Tax Commissioners is hereby given all the powers given to County Boards of Review," does not confer on said State Board of Tax Commissioners original jurisdiction over all the property, real and personal, in the State. *Jones v. Rushville Nat'l Bank*, 138 Ind. 87; 33 N. E. Rep. 390.

4. *Revising Tax Lists*.—The State Board of Tax Commissioners has no original jurisdiction to revise individual tax lists other than "railroad property," and the equalization of the assessment of real estate; and not having such power, such board can not order an addition to be made by the County Auditor to the tax list of an individual, unless jurisdiction is given to such board by an appeal as provided by law. *Cummings v. Stark*, 133 Ind. 94; 34 N. E. Rep. 414; *Eaton v. Union*, etc., *Nat. Bank*, 141 Ind. 136; 40 N. E. Rep. 668.

5. *Collateral Attack—Irrregularities*.—The powers conferred upon the State Board of Tax Commissioners are of a quasi-judicial character, and the acts of such board are not open to collateral attack. Errors or irregularities committed by such board must be corrected in the mode pointed out by the statute. Courts have no power to control the discretion of such board. *Biggs v. Board, etc., of Lake County*, 7 Ind. App. 142; 34 N. E. Rep. 500; *First National Bank v. Isaacs*, 161 Ind. 278; 68 N. E. Rep. 288.

6. *Decisions of Board Final*.—The court can not inquire into the proceedings of the State Board of Tax Commissioners in the absence of statutory authority, and determine whether such board arrived at just valuations or not, and grant relief against erroneous assessments of such board; and the court having no such power in this State, the decision of the State board is final. *Cleveland, etc., Ry. Co. v. Backus*, 133 Ind. 513; 33 N. E. Rep. 421; 18 L. R. A. 729; affirmed 154 U. S. 439; 14 Sup. Ct. Rep. 1122; *Pittsburg, etc., Ry. Co. v. Backus*, 133 Ind. 625; 33 N. E. Rep. 432; affirmed 154 U. S. 421; 14 Sup. Ct. Rep. 1114; *Hart v. Smith*, 159 Ind. 182; 64 N. E. Rep. 601; *First National Bank v. Isaacs*, 161 Ind. 278; 68 N. E. Rep. 288.

7. *Setting Aside Valuations*.—When the State Board of Tax Commissioners has fixed the valuation of property falling within its jurisdiction, and has assessed such property, its action in that behalf is final, and can not be avoided or set aside, except for fraud on the part of such board, which would render the assessment void. *Cleveland, etc., Ry. Co. v. Backus*, 133 Ind. 513; 33 N. E. Rep. 421; 18 L. R. A. 729; affirmed 154 U. S. 439; 14 Sup. Ct. Rep. 1122; *Pittsburg, etc., Ry. Co. v. Backus*, 133 Ind. 625; 33 N. E. Rep. 432; affirmed 154 U. S. 421; 14 Sup. Ct. Rep. 1114.

8. *Evidence of Value*.—The State Board of Tax Commissioners, in fixing the value of corporate property for taxation, is not confined for information to the statements furnished by such corporations as required by statute, but may resort to other means to obtain information. *State v. Adams Ex. Co.*, 144 Ind. 549; 42 N. E. Rep. 483.

9. *Method of Assessing Railroads is Constitutional*.—The method provided in the above section for the assessment of railroads is a constitutional exercise of legislative power. *Cleveland, etc., R. R. Co. v. Backus*, 133 Ind. 513; 33 N. E. Rep. 421; 18 L. R. A. 729; affirmed 154 U. S. 439; 14 Sup. Ct. Rep. 1122; *Pittsburg, etc., R. R. Co. v. Backus*, 133 Ind. 625; 33 N. E. Rep. 432; affirmed 154 U. S. 421; 14 Sup. Ct. Rep. 1114; *Indianapolis, etc., R. R. Co. v. Backus*, 133 Ind. 609; 33 N. E. Rep. 443; *Evansville, etc., R. R. Co. v. West*, 139 Ind. 254; 37 N. E. Rep. 1009.

10. *Valuation of Stock—Review by Courts*.—When the State Board of Tax Commissioners has determined that the shares of stock held by a company have a certain taxable value, such action, in the absence of fraud, is not reviewable by the courts. *Hart v. Smith*, 159 Ind. 182; 64 N. E. Rep. 601.

11. *Injunction—No Jurisdiction*.—When the State Board of Tax Commissioners acts without jurisdiction, the courts have the power to arrest the consequence of its acts. *Hart v. Smith*, 159 Ind. 182; 64 N. E. Rep. 601; *State Board v. Holliday*, 150 Ind. 216; 49 N. E. Rep. 14; 42 L. R. A. 826.

12. *Injunction—Collateral Attack—Good Will*.—The proceedings to enjoin the State Board of Tax Commissioners from taxing the good will of a business being informal, the rule that obtains requiring the infirmity to appear on the face of the record in a collateral attack does not apply. *Hart v. Smith*, 159 Ind. 182; 64 N. E. Rep. 601.

13. *Increase of Assessment—Injunction—Only Part Illegal*.—Where part of an increased assessment is illegal, and there is no means of ascertaining the amount of the legal portion, the whole increase may be held to be invalid. *Hart v. Smith*, 159 Ind. 182; 64 N. E. Rep. 601.

14. *Legalizing Sessions*.—The Legislature has the power to legalize the sessions of the State Board of Tax Commissioners and all its proceedings thereat. *First National Bank v. Isaacs*, 161 Ind. 278; 68 N. E. Rep. 288.

15. *Increasing Valuation for Past Years*.—The State Board of Tax Commissioners can not reassess property assessed in previous years because of undervaluation in such previous years, nor make an original assessment of property for previous years, or property omitted from taxation in such years, nor increase the assessment of property for the current year because of omissions of previous years. *Parkinson v. Jasper County Tel. Co.*, 31 Ind. App. 135; 67 N. E. Rep. 471.

16. *Powers of County Boards of Review*.—The provision of the statute conferring upon the State Board the powers possessed by the County Boards of Review was intended to confer such powers in cases where the State Board had jurisdiction, either original or appellate, and not to confer original jurisdiction over all the property of the State. *Parkinson v. Jasper County Tel. Co.*, 31 Ind. App. 135; 67 N. E. Rep. 471.

17. *Expenses of State Board*.—The necessary costs and expenses of the State Board of Tax Commissioners should be paid out of the State Treasury on warrants of the Auditor of State. The expenses of the State Board, carefully scheduled and certified to by the State board, form a sufficient authority to the Auditor of State to issue his warrant in favor of the persons entitled to the several sums due as therein set forth, which should be paid out of and charged against the general fund. *Smith*, 1892, p. 131.

[Acts 1891, p. 199. Approved and in force March 6, 1891.]

152. Oath and Duties of Secretary—

131. The secretary shall take and subscribe an oath for the faithful performance of his duties as said secretary, and shall

keep a record of the proceedings of the Board, which shall be certified by the chairman and secretary and filed in the office of the Auditor of State. (3 Burns R. S. 1901, §8549.)

1. *Duties.*—See Sec. 151.

[Acts 1907, p. 131. Approved and in force March 2, 1907.]

113. Quorum—Special Meetings—

5. Any three members of said board shall constitute a quorum for the transaction of business, and the board may adjourn from time to time until the business before it is finally disposed of, but the duration of their sessions for the purpose of originally assessing railroad property and all other persons, copartnerships, companies, associations or corporations which said State Board of Tax Commissioners is by law required to assess originally, shall not exceed fifty (50) days. The State Board of Tax Commissioners may also meet in special session at any time upon the call of the chairman or secretary of the board, and any business may be transacted by said board at such special meeting which is not expressly required by law to be transacted at a regular meeting held at the time prescribed in the law.

1. *Quorum.*—See Secs. 150 and 156.

114. Reports to Auditor of State—

6. From and after January 1st, 1907, every railroad company, telegraph company, telephone company, express company [company], sleeping car company, pipe line company, and other company taxed in the State of Indiana, as any one of any of the above companies enumerated, shall make out and deliver to the Auditor of State the statement required by law of such company with reference to the first day of March, and such statement shall be filed annually between the first day of March and the 25th day of March, and such statements shall show the market value of the shares of stock of such company upon the first day of March of the year for which the statement is made.

[Acts 1891, p. 199. Approved and in force March 6, 1891.]

115. Duties of State Board—

120. It shall be the duty of the State Board of Tax Commissioners:

First. To prescribe all forms of books and blanks used in the assessment and collection of taxes, and to change such forms when prescribed by law, in case any such change shall be necessary.

Second. To construe the tax and revenue laws of the State and instruct them in relation to their duties with reference to

taxation and assessment, whenever requested so to do by any officer acting under any such laws, or by any other person interested therein.

Third. To see that all assessments of property in this State are made according to law.

Fourth. Especially to see that all the railroads and other corporations of the State are assessed and taxed as provided by law.

Fifth. To see that all taxes due the State are collected.

Sixth. To enforce penalties prescribed by any revenue law of the State for disobedience of its provisions.

Seventh. To determine, whenever necessary, the amount required to be levied upon property in the several counties to cover any deficiency in the State revenues, not otherwise provided for.

Eighth. To examine all books, papers and accounts, and to interrogate under oath, or otherwise, all persons necessary to enable the board to acquire and obtain all information that could in any manner aid it in securing a compliance with the tax and revenue laws of the State by all persons or corporations liable to taxation, or to pay any license fee under any law in force in this State.

Ninth. To make such rules and regulations as the board shall deem proper to effectually carry out the purposes for which the board is constituted, and to make all necessary rules and regulations not inconsistent with law, as the board may deem necessary with respect to its own meetings and procedure.

Tenth. To report to the General Assembly, at each session, the whole amount of revenue collected in the State for all purposes, classifying as to State, county, township, and municipal purposes, with the sources thereof, the amount lost and the causes of the loss, the proceedings of the board, and such other matters of information concerning the public revenues, as they may deem of public interest.

Eleventh. To make diligent investigation and inquiry concerning the revenue laws and systems of other States and countries, so far as the same are made known by published reports, or statistics, or can be ascertained by correspondence with officers thereof, and with the aid of information thus obtained, together with experience and observation of our own laws, to recommend to the General Assembly at each session thereof, such amendments, changes or modifications of our revenue laws as seem proper or necessary to remedy injustice or irregularity in taxation, or to facilitate the assessment and collection of public revenues.

Twelfth. To see that each county in the State be visited by at least one member of the board, as often as once each year, to the end that complaints concerning the law may be heard, and that

information concerning its workings may be collected. That all revenue officers comply with the law, and all violations thereof be punished, and that all proper suggestions as to amendments and changes may be made. (3 Burns R. S. 1901, §8538.)

1. *Calling Meetings of Assessors.*—Annually the State Board of Tax Commissioners call meetings of the county assessors. See Sec. 141.

2. *Unauthorized Taxation.*—The State Board of Tax Commissioners can not authorize the taxation of property not authorized by law to be taxed. *State Board v. Holiday*, 150 Ind. 216; 49 N. E. Rep. 14; 42 L. R. A. 823.

3. *Punishing Contempts.*—The State Board of Tax Commissioners can not be empowered to punish persons for contempt. *Langenberg v. Decker*, 131 Ind. 471; 31 N. E. Rep. 90; 16 L. R. A. 108.

4. *Revising Tax Lists—Increasing Assessments.*—The State Board of Tax Commissioners have no original jurisdiction to revise tax lists other than railroad property, nor can it authorize an increase of the assessment of personal property of private persons. *Cummings v. Stark*, 138 Ind. 94; 34 N. E. Rep. 44; *Jones v. Rushville Bank*, 138 Ind. 87; 35 N. E. Rep. 390; *First National Bank v. Brodhecker*, 137 Ind. 683; 37 N. E. Rep. 340; *Eaton v. Union Bank*, 141 Ind. 136; 40 N. E. Rep. 668.

5. *Control of Discretion—Errors.*—Courts can not control the discretion of the State Board of Tax Commissioners, and errors and irregularities must be corrected in the manner provided by statute. *Cleveland, etc., R. R. Co. v. Backus*, 133 Ind. 513; 33 N. E. Rep. 421; 18 L. R. A. 729; affirmed 154 U. S. 439; 14 Sup. Ct. Rep. 1122; *Biggs v. Board*, 7 Ind. App. 142; 34 N. E. Rep. 590.

156. Record—Quorum—

121. A record of the proceedings of such board shall be kept at the Capitol, open to the inspection of the public. A majority of such board shall constitute a quorum to do business. (3 Burns R. S. 1901, §8539.)

1. *Quorum.*—Any three members of the board constitute a quorum. Secs. 150 and 153.

2. *Record Conclusive.*—The record required to be kept by the State Board of Tax Commissioners is final and conclusive, and the courts can not inquire into the assessments made by such board, unless it be attacked for fraud. *Indianapolis, etc., Ry. Co. v. Backus*, 133 Ind. 609; 33 N. E. Rep. 443.

3. *Certified Copy as Evidence.*—A copy of the assessments made for taxation by the State Board of Tax Commissioners, certified to by the Auditor of State, is competent evidence in a proper case, to collect taxes; and if it differ from the abstract certified by that officer down to the County Auditor, it may be adopted instead of the abstract if there be a mistake in the latter. *Midland, etc. Ry. Co. v. State*, 11 Ind. 433; 33 N. E. Rep. 57.

4. *Correcting Record.*—If omissions and errors are discovered in the records of the State Board, the board not only has the legal right to supply the omission and to correct the error at any subsequent meeting, but it is its duty to do so. *First National Bank v. Isaacs*, 161 Ind. 278; 68 N. E. Rep. 288.

157. Disobeying Process—Penalty—

124. Any person who shall disobey any subpoena, or subpoena *duces tecum* of said board or any member thereof, or refuse to testify, when requested so to do by said board or any member thereof, shall be deemed guilty of a misdemeanor, and upon con-

viction thereof, shall be fined in any sum not less than \$50, nor more than \$1,000 for each offense. (3 Burns R. S. 1901, §8542.)

1. *Punishing for Contempts.*—The board can not be empowered to punish persons for contempt. *Langenberg v. Decker*, 131 Ind. 471; 31 N. E. Rep. 90; 16 L. R. A. 108.

158. Appeals From County Board of Review—

125. Any person, partnership, company, association or corporation dissatisfied with the action of the County Board of Review, upon any original assessment or upon any application to increase or decrease the assessment made by any Township or County Assessor, or upon any order for the assessment of hidden or omitted property, shall have the right to appeal from the order or assessment of the County Board of Review to the State Board of Tax Commissioners; and in like manner any Township or County Assessor, or any member of the County Board of Review, or any taxpayer or taxpayers of the county shall have the right to appeal to the State Board of Tax Commissioners from any original assessment made by said County Board of Review, and from any order of the County Board of Review increasing or decreasing any assessment, or refusing to increase the same, or to assess hidden or omitted property, upon giving notice of such appeal within five days after the adjournment of the County Board of Review, to the County Auditor of the county from which said appeal is to be taken. Upon receiving notice of such appeal, the Auditor of such county shall forthwith make out a statement, in writing, showing concisely the substance of the complaint made, if any, and the action of the board thereon, and shall transmit the same by mail to the Auditor of State, who shall lay the same, for its action, before the State Board of Tax Commissioners when it shall convene: Provided, That such State Board of Tax Commissioners may make such regulations in regard to the taking of appeals, not inconsistent herewith, as they may deem necessary to protect the rights of the parties questioning their assessments. Such State Board of Tax Commissioners shall, upon appeal from an assessment by the party aggrieved, assess the property in controversy. The Auditor of State shall certify to the Auditors of the several counties, all such changes made by the said State Board of Tax Commissioners, showing in the first column the assessment made by the county or township officials, and in the second column the assessment as made by the said State Board of Tax Commissioners, which latter amounts shall be by said Auditor extended on the tax duplicates in lieu of the amounts fixed by said township or county officials, or by the said County Board of Review: Provided, further, That it shall not be necessary for said Auditor of State to issue separate notices of certificates with

reference to each person affected, but he may include all persons affected in any one county in one or more notices of certificates: Provided, further, That the pendency of such appeals shall not operate to stay the collection of any tax, except by special order of the board, and upon such conditions as it may prescribe. (As amended March 1, 1895. Acts 1895, p. 74.) (3 Burns R. S. 1901, §8543.)

1. *Raising Assessment.*—Without an appeal from the County Board of Review, the State Board of Tax Commissioners has no jurisdiction and cannot raise an assessment. *First Nat'l Bank v. Brodbeck*, 137 Ind. 633, 604; 31 N. E. Rep. 340; *Jones v. Rushville Nat'l Bank*, 133 Ind. 87, 91; 35 N. E. Rep. 390.

2. *Excuse for Not Taking Appeal.*—The law grants an appeal from the County Board of Review as a matter of right, and if the taxpayer fails to exercise it in any way, the neglect of the State board to provide regulations and furnish blanks is not an available excuse for his failure to demand an appeal. *Senour v. Matchett*, 140 Ind. 636; 40 N. E. Rep. 122.

3. *Revising Tax Lists.*—The State Board of Tax Commissioners has no original jurisdiction to revise individual tax lists other than "railroad property," and the equalization of assessments of real estate. *Jones v. Rushville Nat'l Bank*, 138 Ind. 87; 35 N. E. Rep. 390; *Cummings v. Stark*, 138 Ind. 84; 34 N. E. Rep. 444; *Eaton v. Union Bank*, 141 Ind. 136; 40 N. E. Rep. 668.

4. *Increasing Assessment.*—Where the County Board of Review fixes the amount that the property of a bank shall be assessed at for taxation, and no appeal is taken from the action of such board, the State Board of Tax Commissioners can not increase the assessment made by such County Board of Review. *Jones v. Rushville Nat'l Bank*, 138 Ind. 87; 35 N. E. Rep. 390; *Cummings v. Stark*, 138 Ind. 94; 34 N. E. Rep. 444; *Eaton v. Union Bank*, 141 Ind. 136; 40 N. E. Rep. 668.

5. *Adding Omitted Property.*—The State Board of Tax Commissioners can not add omitted property to a tax list, except in case of an appeal from an instance where that question is involved. *Cummings v. Stark*, 138 Ind. 94; 34 N. E. Rep. 444.

6. *Transcript on Appeal.*—A County Auditor is not authorized to add to a transcript on an appeal from a County Board of Review to the State Board of Tax Commissioners a certificate showing that the County Board of Review had overlooked a part of the appellant's property in making an assessment. *First National Bank v. Isaacs*, 161 Ind. 278; 68 N. E. Rep. 288.

7. *Adding to Valuation After Appeal.*—After the State Board of Tax Commissioners have determined on appeal the value of the property of the appellant, neither the County Board of Review nor the County Auditor can add to such valuation. *First National Bank v. Isaacs*, 161 Ind. 278; 68 N. E. Rep. 288.

8. *Time for Appeal—Sunday.*—The County Board of Review adjourned July 18, 1899; a taxpayer prayed an appeal giving notice on Monday, July 24, 1899. Under the provision of the statute that where the last day for an appeal is Sunday it shall be excluded, this appeal was taken in time. *Taylor*, 1900, p. 130.

159. Duty as to Lands—

133. It shall be the duty of the said board to examine the abstracts of all the real and personal property assessed for taxation in the several counties of this State as returned to the Auditor of State, and to equalize the assessments as hereinafter provided; but said board shall not reduce the aggregate assessed valuation

below the true cash value, as defined in this act. (As amended February 27, 1901. Acts 1901, p. 44.) (3 Burns R. S. 1901, §8551.)

160. Abstract of Assessment—Duty of County Auditors—

134. For the purpose of properly equalizing the valuations of real and personal property, and railroad property within the State, it shall be the duty of the County Auditors on or before the 20th day of July of each year, upon the receipt of the assessment books, to make out and transmit to the Auditor of State an abstract of the assessment of property, showing the number, value and average value of each class or kind of enumerated property, as shown by the assessment, the value of each item of enumerated property, and total value of personal property, the value of all land in each civil township without improvements, the value of all improvements thereon, and the value of such land with improvements, and, in like order, all city or town inlots and outlots, showing the value of such lots without improvements, the value of improvements, and the value of such lots with improvements, the length of the main track, or tracks, the length of the side track, or tracks, the number or descriptions, the value and average values of each separate item of railroad property. Such abstract shall be arranged in such manner as to show by civil townships the number of acres, value, and average value of improved lands, and in like manner the number of acres, value, and average value of unimproved lands, total number of acres, total value and average value per acre of all lands, the number and value and average value of improved town or city lots, the number, value and average value of unimproved town or city lots, the total number of lots, total value and average value of all lots, and the total value of all property, real and personal. Said abstract shall be made out on the blanks, which it shall be the duty of the Auditor of State to furnish the County Auditor for that purpose. The value to be given in said abstract shall be the assessed valuation, except in the case of railroad property, denominated railroad track and rolling stock, the value of which shall be given as returned by the railroad company to the County Auditors. The County Auditor shall at the same time and accompanying said abstract, furnish a detailed statement of the railroad property, denominated railroad track and rolling stock, reported by each road located in or through their counties. If there are any roads so located that have not made their report, as required by this act, the County Auditors shall report the facts, giving the name of such railroad, and in case of the failure on the part of any County Auditor to furnish the proper returns of the assessment of his county to the Auditor of State prior to or during the meeting of the State Board of Tax

Commissioners in each year, said board may, by order, authorize the Auditor of State to equalize the assessment of such county when full returns have been received by him. (As amended February 27, 1901. Acts 1901, p. 44.) (3 Burns R. S. 1901, §3552.)

141. Rules for Equalization—

135. Said board, in equalizing the valuation of property as listed and assessed in the different counties, shall consider the following classes of property separately, viz.: Railroad property, lands, town and city lots and personal property, and upon such consideration determine such rates of addition to, or reduction from the listed or assessed valuation of each of said classes of property in each county, or to or from the aggregate assessed value of each of said classes in the State, as may be deemed by the board to be equitable and just; such rates being in all cases even and not fractional, and such rates as finally determined by said board shall not be combined. (As amended February 27, 1901. Acts 1901, p. 44.) (3 Burns R. S. 1901, §8553.)

162. Counties, How Equalized—

136. Counties shall be equalized by adding to the aggregate value of the lands, town and city lots and personal property, in every county in which said board may believe the valuation to be too low, such rate per centum as will raise the same to its proper proportionate value, and by deducting from the aggregate assessed value thereof, in every county in which said board may believe the valuation to be too high, such per centum as will reduce the same to its proper value, as defined in this act. (As amended February 27, 1901. Acts 1901, p. 44.) (3 Burns R. S. 1901, §8554.)

1. *Notice—Constitutional.*—No special notice of the intention of the State board to raise or lower the assessment of a county need be given, although by such action the valuation of individuals' property that has been listed be increased or lowered; and the statute is not invalid on the ground that it has not provided for such special notice to each individual. *Hubbard v. Goss*, 157 Ind. 55; 62 N. E. Rep. 36. See *Cincinnati, etc., R. R. Co. v. Commonwealth*, 115 J. S. 321; 6 Sup. Ct. Rep. 60; *Taylor v. Secor*, 92 U. S. 609; *County of San Mateo v. Southern Pac. R. R. Co.*, 13 Fed. Rep. 722; *Sanford v. Pole*, 69 Fed. Rep. 546; 16 C. C. A. 305; 37 U. S. App. 378.

[Acts 1905, p. 105. Approved February 28, 1905. In force April 15, 1905.]

163. Equalization of Counties—

1. It shall be the duty of the state board of tax commissioners, during the first five days of its second session each year, to consider the assessments of the personal property of the various counties of the state, and also the assessment of the real estate of such counties in the years when it is required to equalize the same,

determine the counties in which the assessment of the real estate or personal property or both appears to be too low, fix a day or days in their next succeeding session in the same year, not earlier than fifteen days from the expiration of said five days, when it will consider the matter of the increase of such assessments, and make an order directing the manner in which a hearing may be had with reference thereto, but said board shall not at said second session make any order for the purpose of equalizing such assessments. Within said first five days of said second session the said board shall certify to the auditor of each of such counties the fact of the determination of said board to consider the matter of the increase of such assessments, stating whether the increase to be considered appertains to real or personal property or both and naming the day on which a hearing may be had. Such certificate shall be accompanied by a copy of the order directing the manner in which such hearing may be had. (4 Burns Supp., §8550a.)

164. County Auditor—Notice to Taxpayers—County Commissioners—

2. It shall be the duty of the auditor of any county receiving such certificate to give the taxpayers thereof immediate notice of the time, place and object of such hearing by posting one copy thereof at the door of the court house in said county and by one publication thereof in the first issues thereafter of two newspapers of different politics, published in said county, if such there be, one of which shall be a daily in counties in which a daily is published. Such auditor shall also call the board of county commissioners to meet in special session on a day to be fixed by him within five days of the receipt of such certificate, unless it shall be in regular session within that time, at which regular or special meeting such board shall take such steps as it may deem proper and expedient to protect the interest of the taxpayers at such hearing and prevent an unjust and inequitable increase in the assessment of the property of such county. (4 Burns Supp., §8550b.)

165. Hearings—Who May Appear—

3. At the time fixed for such hearing any representative of the board of county commissioners of any county and any taxpayer of any county to be affected by any proposed increase of assessment may appear in person or by attorney and be heard with reference thereto. (4 Burns Supp., §8550c.)

166. Increase—When May be Made—

4. After the hearings hereinbefore provided have been concluded such board shall proceed to equalize the assessments of property in the various counties of the state as by law provided, but no

increase of any assessment of either the real or personal property of any county shall be made where notice has not been given as herein provided. In determining what, if any, increase in assessment shall be made such board shall take into account the valuation of similar property in other counties and shall as far as practicable make the valuation uniform. (4 Burns Supp., §8550d.)

167. Extension of Session—

5. For the purpose of hearing and determining the matter of such proposed increase in assessments the third or last regular session of the state board of tax commissioners may be extended such length of time as its business may require not exceeding ten days. (4 Burns Supp., §8550e.)

1. *Sessions.*—See Sec. 106.

168. Railroad Property—Assessment—

137. Said board shall also assess the railroad property, denominated in this act as "railroad track" and "rolling stock," at its true cash value, and said board is hereby given the power and authority, by committee or otherwise, to examine persons or papers. The amounts so determined and assessed shall be certified by the Auditor of State to the County Auditors of the proper counties. The County Auditor shall, in like manner, distribute the value so certified to him by the Auditor of State to the several townships, cities and towns in his county, entitled to a proportionate value of such railroad track and rolling stock; and said Auditor shall compute and extend taxes against such value the same as against other property in such townships, cities and towns. (3 Burns R. S. 1901, §8555.)

1. *How Valued.*—When a railroad runs into or through two or more States, its value for taxation purposes, in each, is fairly estimated by taking that part of the value of the entire road which is measured by the proportion of the length of the particular road in that State to that of the whole road. *Pittsburg, etc., Ry. Co. v. Backus*, 154 U. S. 421; 14 Sup. Ct. Rep. 1114; affirming 133 Ind. 625; 33 N. E. Rep. 432; *Cleveland, etc., Ry. Co. v. Backus*, 133 Ind. 513; 33 N. E. Rep. 421; 18 L. R. A. 729; affirmed 154 U. S. 439; 14 Sup. Ct. Rep. 1122; *Indianapolis, etc., R. Co. v. Backus*, 133 Ind. 609; 33 N. E. Rep. 443; *Evansville, etc., R. R. Co. v. West*, 130 Ind. 254; 37 N. E. Rep. 1009.

2. *Rolling Stock Defined.*—Under the revenue laws of this State, the State Board of Tax Commissioners has exclusive authority to value and assess the railroad property denominated "railroad track" and "rolling stock." *Pfaff v. Terre Haute, etc., R. R. Co.*, 108 Ind. 144; 9 N. E. Rep. 93.

3. *Railroad Track Defined.*—The right of way, with the improvements upon it, is to be valued and assessed as "railroad track." *Pfaff v. Terre Haute, etc., R. R. Co.*, 108 Ind. 144; 9 N. E. Rep. 93.

4. *Right of Way Defined.*—The phrase "right of way" is not limited to a strip of land of any definite width at all points on the line of a railroad, but includes lands and lots acquired for necessary side tracks and turnouts, and the improvements thereon in the way of coal sheds, freight houses, water tanks, repair shops, round houses and the like. *Pfaff v. Terre Haute, etc., R. R. Co.*, 108 Ind. 144; 9 N. E. Rep. 93.

5. *Failure to Apportion to Town.*—An action will not lie to enjoin a town from the collection of taxes against a railroad company because of the failure of the County Auditor to apportion to such town its proper share of the taxable valuation of the property.

The fact that a railroad company paid taxes to the township upon its property located within the corporate limits of a town will not entitle it to an injunction to prevent the town from collecting taxes due it. *C. C. C. & St. L. Ry. Co. v. Town of Waynetown*, 153 Ind. 560; 55 N. E. Rep. 451.

169. Tabulation of Results—

138. When said Board shall have separately considered the several classes of property as hereinbefore required, the result shall be combined into one table and the same shall be examined, compared and perfected in such manner as said Board shall deem best to accomplish a just equalization of assessment throughout the State, preserving, however, the principle of separate rates for each class of property. (3 Burns R. S. 1901, §8556.)

170. Rates Certified to Auditor of State—

139. When said Board shall have completed its assessments, and its equalization of assessments, for any year, it shall certify to the Auditor of State the rates finally determined by said Board to be added or deducted from the listed or assessed valuation of each class of property in the several counties, and also the amounts assessed by said Board, and it shall be the duty of said Auditor, under his seal of office, to report the action of the Board to the several County Auditors immediately after the adjournment of said Board. (3 Burns R. S. 1901, §8557.)

1. *Injunction.*—If the assessments are illegal and unauthorized by law, the Auditor of State may be enjoined from certifying to the County Auditors the result of the State Board's determination and assessments. *Fargo v. Hart*, 193 U. S. 490.

2. *Evidence to Set Aside Valuation.*—The judgment of a State board empowered to fix a valuation for taxation can not be set aside by the testimony of witnesses that the valuation was other than that fixed by the board, where there is no evidence of fraud or of gross error in the system on which the valuations were made. *Pittsburg, Cincinnati, Chicago & St. Louis Ry. v. Backus*, 154 U. S. 421; 14 Sup. Ct. Rep. 1114; affirming 133 Ind. 625; 33 N. E. Rep. 432.

171. Rates Extended by County Auditors—

140. All rates for taxes provided for by law shall be computed and extended by each County Auditor on the Assessor's valuation of property, as equalized by the County Board of Review and State Board of Tax Commissioners, except as otherwise provided by law. (3 Burns R. S. 1901, §8558.)

1. *Entry of Assessments of Railroad Property.*—See Sec. 106.

2. *Amendment by Auditor of State Board's Assessment.*—Where upon appeal from the County Board of Review the State Board of Tax Commissioners reduced the original assessment, the act of the County Auditor in making an assessment of his own which corresponded neither with the original assessment made by the County Board, nor with that authorized by the State Board, was held unauthorized and illegal. *First National Bank v. Isaacs*, 161 Ind. 278; 68 N. E. Rep. 288.

172. Reports Published—

141. A report of all the proceedings of said State Board of Tax Commissioners shall be published annually in pamphlet form, and three thousand copies thereof printed, of which number the Auditor of State shall retain two hundred copies and the remainder shall be distributed by him to the several counties in the proportion usual in similar cases. (3 Burns R. S. 1901, §8539.)

1. *Injunction—Complaint.*—Where a complaint, in a suit to enjoin the collection of taxes on the ground that the assessment had been reduced on appeal to the State Board of Tax Commissioners, alleged that the minutes of said Board were indefinite and uncertain, and were afterward corrected, a copy of the corrected minutes filed as an exhibit can not be considered in determining the sufficiency of the complaint, since the action is not founded on the minutes. *First National Bank v. Gregor*, 157 Ind. 479; 62 N. E. Rep. 21.

ARTICLE 16—DUTIES OF COUNTY AUDITOR.

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| 173. May Assess Omitted Property—
Notice. | 178. Adding and Apportioning Rates.
179. Correcting Errors. |
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[Acts 1891, p. 199. Approved and in force March 1, 1891.]

173. May Assess Omitted Property—Notice—

142. Whenever the County Auditor shall discover or receive credible information, or if he shall have reason to believe that any real or personal property has, from any cause, been omitted in whole or in part, in the assessment of any year or number of years, from the assessment book or from the tax duplicate, he shall proceed to correct the tax duplicate, and add such property thereto, with the proper valuation, and charge such property and the owner thereof with the proper amount of taxes thereon; to enable him to do which he is invested with all the powers of assessors under this act. But before making such correction or addition, if the person claiming to own such property, or occupying it or in possession thereof resides in the county, and is not present, he shall give such person notice in writing of his intention to add such property to the tax duplicate, describing it in general terms, and requiring such person to appear before him at his office at a specified time, within five days after giving such notice and to show cause, if any, why such property should not be added to the tax duplicate; and if the party so notified does not appear, or if he appears and fails to show any good and sufficient cause why such assessment shall not be made, the same shall be made, and the County Auditor shall, in all cases, file in his office a statement of the facts or evidence on which he made such correction; but, he shall in no case reduce the amount returned by the

assessor without the written consent of the Auditor of State, given on the statement of facts submitted by the County Auditor. When the County Auditor shall discover credible information or have reason to believe that real or personal property has, from any cause, been omitted, in whole or in part, from assessment for taxation, or such credible information shall be furnished to such County Auditor it shall be the duty of such County Auditor to take the steps provided for by this section, to place such omitted property on the tax duplicate. If such County Auditor shall fail or refuse, on the discovery by himself, or on credible information being furnished him by another person, that property has been omitted from taxation, the State on the relation of any State officer, or of the State Board of Tax Commissioners, or of any tax-payer of the county in which such failure or refusal occurs, shall have the right to proceed against such County Auditor in any court of competent jurisdiction by mandamus, to compel such County Auditor to comply with the provisions of this section. In the trial of such a suit, the question of what constitutes credible information, as mentioned in this act, shall be a question of fact to be determined by the court or jury trying the case, and either party shall have the right to demand a jury to try such question of fact. If judgment shall be rendered to the effect that credible information has been discovered by, or furnished to such County Auditor, or that he has reason to believe that property has been omitted from taxation, it shall then be the duty of such County Auditor to forthwith place such omitted property on the tax duplicate in accordance with the provisions of this act, and such County Auditor shall be liable for all costs of such mandamus suit and for a reasonable attorney's fee for relator's attorney which shall be taxed as a part of the costs of such suit in all cases, where judgment is rendered against him: Provided, however, That in case proceedings are instituted hereunder on the relation of any private citizen, such relator shall give bond to the satisfaction of the court to pay all costs which may be recovered against them. (3 Burns R. S. 1901, §8560.)

[Acts 1897, p. 141. Approved and in force March 4, 1897.]

174. Penalty for Violating Act—

2. Any County Auditor who shall be guilty of violating any of the provisions of section one of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined for each violation in any sum not less than one hundred dollars, nor more than five thousand dollars, to which may be added imprisonment in the county jail for a period not to exceed one year. (3 Burns R. S. 1901, §8560a.)

1. *County Assessors.*—For powers of the County Assessors to assess omitted property, see Sec. 140.

2. *County Board of Review.*—For powers of the County Board of Review to assess omitted property, see Sec. 142.

3. *County Treasurer.*—For powers of the County Treasurer to assess omitted property, see Sec. 139.

3a. *Township Assessors.*—For powers of a Township Assessor to assess omitted property, see Sec. 134.

4. *Powers of Auditors—Compensation.*—County Auditors, in assessing omitted property under this section, have the powers of Assessors, but are not entitled to any extra compensation for such services, nor can they contract with county boards for pay for such services. *Vanderhook v. Williams*, 106 Ind. 345; 1 N. E. Rep. 619; 8 N. E. Rep. 113; *Williams v. Segur*, 106 Ind. 308; 1 N. E. Rep. 707.

5. *Increasing Valuation.*—County Auditors can not increase the valuation of property as fixed by Assessors, although such property is purposely undervalued. *Williams v. Segur*, 106 Ind. 308; 28 N. E. Rep. 71; *Florer v. Sherwood*, 128 Ind. 495; 28 N. E. Rep. 71; *Board v. Senn*, 117 Ind. 410; 20 N. E. Rep. 276; *Woll v. Thomas*, 1 App. 232; 27 N. E. Rep. 578; *DuBois v. Board*, 4 App. 138; 30 N. E. Rep. 206; *Donch v. Board*, 4 App. 374; 30 N. E. Rep. 204; *Saint v. Welsh*, 141 Ind. 382; 40 N. E. Rep. 303; *Parkison v. Thompson*, 164 Ind. 309; 73 N. E. Rep. 109; *McConnell v. Hampton*, 164 Ind. 547; 73 N. E. Rep. 1092.

6. *Specific Property.*—County Auditors can only assess omitted property when there is specific omitted property capable of identification. *Florer v. Sherwood*, 128 Ind. 495; 28 N. E. Rep. 71.

7. *Listing Under Wrong Item.*—Listing property under the wrong item in the schedule of assessment will not authorize the assessment of such property as omitted property. *Woll v. Thomas*, 1 App. 232; 27 N. E. Rep. 578.

8. *Presumption of Correctness.*—All presumptions are to be indulged in favor of the correctness of the proceedings of the Auditor in assessing omitted property, and the error, if any, must be pointed out by the complaining party. *Buck v. Miller*, 147 Ind. 586; 45 N. E. Rep. 647; 47 N. E. Rep. 8; 37 L. R. A. 384. See note 39.

9. *Describing Property.*—A County Auditor, in assessing property for taxation as omitted property, must describe the property so assessed, and a description as "money loaned" and "credits" is not sufficient. *Florer v. Sheridan*, 137 Ind. 28; 36 N. E. Rep. 365; 23 L. R. A. 278.

10. *Deducting Indebtedness.*—If a taxpayer is notified to appear before the County Auditor to show cause why omitted property should not be assessed for taxation, such taxpayer may have his bona fide indebtedness deducted from credits due him, when such credits are the property sought to be assessed as such omitted property. *Florer v. Sheridan*, 137 Ind. 28; 36 N. E. Rep. 365; 23 L. R. A. 278.

11. *Prior Years.*—A County Auditor, after the taking effect of the tax law of 1891, had power to assess property for taxation that had been omitted and not assessed for years prior to the taking effect of such act. *Reynolds v. Bowen*, 138 Ind. 434; 36 N. E. Rep. 756; 37 N. E. Rep. 962; *Saint v. Welsh*, 141 Ind. 382; 40 N. E. Rep. 303.

12. *Information—Evidence.*—County Auditors, in making assessments of omitted property for taxation, may act upon any information, written or oral, or even upon their own belief. *Reynolds v. Bowen*, 138 Ind. 434; 36 N. E. Rep. 756; 37 N. E. Rep. 962.

13. *Notice to Administrators.*—The personal representative of a deceased property owner is the proper person upon whom notice should be served of an intention to assess for taxation property of such deceased property owner that has been omitted from assessment. *Reynolds v. Bowen*, 138 Ind. 434; 36 N. E. Rep. 756; 37 N. E. Rep. 962; *Graham v. Russell*, 152 Ind. 189; 52 N. E. Rep. 806.

14. *Sufficiency of Notice.*—Notice given by a County Auditor of an intention to assess for taxation property that has been omitted from assessment, need only describe the property in general terms. *Reynolds v. Bowen*, 138 Ind. 434; 36 N. E. Rep. 756; 37 N. E. Rep. 962.

15. *City Clerk May Assess.*—The clerk of a city is the proper person to assess for taxation property that has been omitted from assessment for municipal purposes, such clerk performing the duties in that respect that are conferred by law upon County Auditors. *City of Delphi v. Bowen*, 138 Ind. 235; 36 N. E. Rep. 761.

16. *Notice to Non-resident of County.*—The assessing officer is not required to go outside his own county to give notice to any one of his intention to assess omitted property, under the above section requiring County Auditors to give notice of their intention to assess omitted property of any resident of the county. *Buck v. Miller*, 147 Ind. 586; 45 N. E. Rep. 647; 47 N. E. Rep. 8; 37 L. R. A. 384; 62 Am. St. Rep. 430.

17. *Setting Aside Administrator's Settlement.*—The County Auditor is so far interested by reason of his duties to add omitted property to the tax duplicate that he can maintain an action on behalf of his county to set aside the final settlement of a decedent's estate within three years and subject it to the payment of taxes on property fraudulently concealed in his lifetime, under Section 2558 *Burns R. S. 1901*. *Graham v. Russell*, 152 Ind. 189; 52 N. E. Rep. 806. See *Brunson v. Starbuck*, 32 Ind. App. 457; 70 N. E. Rep. 162; *Cullop v. City of Vincennes*, 34 Ind. App. 607; 72 N. E. Rep. 166.

18. *Law Liberally Construed.*—Tax laws are to be liberally interpreted in aid of the taxing power. *Graham v. Russell*, 152 Ind. 189; 52 N. E. Rep. 806.

19. *No Vested Right in Fraudulent Returns.*—Neither a taxpayer nor his estate after his death can claim any vested right in the fruits of his fraudulent or careless omission to list his property for taxation. *Graham v. Russell*, 152 Ind. 189; 52 N. E. Rep. 806.

20. *Administrators Must Pay Taxes.*—Taxes are not such claims as the law either requires or intends shall be filed against a decedent's estate, but it is the administrator's duty to ascertain their amount and pay them. *Graham v. Russell*, 152 Ind. 189; 52 N. E. Rep. 806; *Cullop v. City of Vincennes*, 34 Ind. App. 607; 72 N. E. Rep. 166.

21. *Setting Aside Administrator's Settlement.*—That a claim for accrued taxes remained unpaid at the time an estate was finally settled is such illegality as will, on proper petition within the prescribed time, result in setting aside the settlement. *Graham v. Russell*, 152 Ind. 189; 52 N. E. Rep. 806.

22. *Suing State.*—The State can be sued only when it has given its consent by law, and there is no law by which it can be summoned to attend the final settlement of a decedent's estate and compelled to present objections at the time or be concluded by the settlement. *Graham v. Russell*, 152 Ind. 189; 52 N. E. Rep. 806.

23. *Duty of Auditor.*—This section authorizes the County Auditor to make an investigation to determine whether taxable property has been secreted and not returned for taxation, and requires him to institute proceedings in relation thereto whenever he shall receive information thereof. *City of Richmond v. Dickinson*, 155 Ind. 345; 58 N. E. Rep. 260.

24. *Prior Years.*—The above section of the tax statutes of 1891 empowers the County Auditor, upon notice to taxpayer, to add for any year or number of years omitted property to the tax duplicate with the proper valuation thereon, and to charge such property to the owner thereof with the taxes thereon. The powers granted to the County Auditor under the section mentioned are not limited alone to that official, but the tax law also extends such powers to the County Treasurer and the County Assessor and Boards of Review. . . . The provisions of the law, to which we have referred, granting the power mentioned to the County Auditor and other officials, are intended to afford an instrumentality or agency through which the State, as far as possible, can prevent property subject to taxation from escaping the burdens or charge imposed by the law. *Graham v. Russell*, 152 Ind. 191; 52 N. E. Rep. 806.

25. *Injunction—Want of Notice.*—The placing of omitted property upon the tax duplicate by the County Auditor without the notice required, is no ground for enjoining the collection of the taxes where none of the substantial rights of the taxpayer is shown to be prejudiced. *Miller v. Vollmer*, 153 Ind. 30; 53 N. E. Rep. 949; *Crowder v. Riggs*, 153 Ind. 158; 53 N. E. Rep. 1019; *McCrory v. O'Keefe*, 102 Ind. 534; 70 N. E. Rep. 812; *People's, etc., Co. v. Harrell*, 36 Ind. App. 588; 76 N. E. Rep. 318.

26. *Evidence of Omitted Property, Sufficiency.*—Where the County Auditor was not permitted to make an inspection of books relating to an estate, was compelled to arrive at the value of the estate for taxation by, in a measure arbitrary deductions from the facts of record and recognized rules of business, although he had no positive evidence before him that the amounts stated by him were entirely accurate, it was held that the assessment made by the Auditor would be presumed to be correct and would not be overthrown in the absence of the preponderance of the evidence to the contrary. *Gallup, Executor, v. Schmidt*, 154 Ind. 106; 56 N. E. Rep. 443; affirmed, 183 U. S. 300; 22 Sup. Ct. Rep. 102; *Brunson v. Starbuck*, 32 Ind. App. 457; 70 N. E. Rep. 162.

27. *Penalties Not Allowed.*—It is a misnomer to call an assessment for omitted property a delinquent tax. It was not a tax at all until after the assessment and extension were made. Before that time, the claim existed only in the right to tax; and not until molded by the form of law into a fixed charge was it susceptible of demand and exact payment. The assessment may be made for any year, or any number of years, but whenever made it is to be placed and extended upon the current duplicates for collection as are other taxes. *Gallup v. Schmidt*, 154 Ind. 217; affirmed, 183 U. S. 300; 22 Sup. Ct. Rep. 103; 56 N. E. Rep. 443.

28. *Notice to Foreign Executor.*—The official residence of an executor, so far as the taxation and administration of the assets of an estate are concerned, is in the county of his appointment, and a notice to appear before the County Auditor and show cause why property of the estate should not be added to the tax duplicate is not void for the reason that the executor resided in another State. *Gallup v. Schmidt*, 154 Ind. 106; 56 N. E. Rep. 443; affirmed, 183 U. S. 300; 22 Sup. Ct. Rep. 102.

29. *Writer of Notice—Invalidity of Law.*—An executor residing in another State, who was present and served with notice of intention of the County Auditor to add to the tax duplicate omitted property belonging to the estate, can not assail the constitutionality of said section on the ground that it attempts to provide for the assessment and taxation of omitted property owned by non-residents of the State, without affording such non-residents notice or day in court. *Gallup v. Schmidt*, 154 Ind. 201; 56 N. E. Rep. 443; affirmed, 183 U. S. 300; 22 Sup. Ct. Rep. 102.

30. *Constitutional.*—The above section of the tax law providing notice to property owners by the County Auditor of his intention to add omitted property to the tax duplicate is not unconstitutional for failure to provide notice to non-residents, since such assessment is not final and the non-resident is not deprived of his day in court. *Gallup v. Schmidt*, 154 Ind. 202; 56 N. E. Rep. 443; 183 U. S. 300; 22 Sup. Ct. Rep. 102.

31. *Insufficient Notice—Property Liable for Taxes.*—When any one seeks the aid of a court of equity to enjoin the assessment of property for taxation or the collection of taxes, he can not obtain relief on the ground of want or insufficiency of notice, or other informalities or irregularities. If the property is taxable, the want of notice or the insufficiency thereof, or any other irregularity or informality, does not entitle the owner thereof to an injunction. *Crowder v. Riggs*, 153 Ind. 161; 53 N. E. Rep. 1019; *Cleveland, etc., R. Co. v. Town of Waynetown*, 153 Ind. 550; 55 N. E. Rep. 451.

32. *Injunction, When Will Not Lie.*—An injunction will not lie to restrain the County Auditor from placing upon the tax duplicate property alleged to have been omitted from taxation for certain years if taxable property belonging to plaintiff was omitted from the tax duplicate in any of the years mentioned. *Crowder v. Riggs*, 153 Ind. 158; 53 N. E. Rep. 1019; *Cleveland, etc., R. Co. v. Town of Waynetown*, 153 Ind. 550; 55 N. E. Rep. 451.

33. *Filing Claim for Taxes.*—The State is not required to file, for payment, its claim for taxes against a decedent's estate. *Graham v. Russell*, 152 Ind. 186; 52 N. E. Rep. 806.

34. *Notice to Insane Person.*—Notice to an insane owner of omitted property may be given to him if he has no guardian; if he has a guardian, then notice must be given to such guardian. *Hennel v. Board*, 132 Ind. 32; 31 N. E. Rep. 462.

35. *Converting Taxable Property into Non-Taxable.*—If taxable property has temporarily been converted into non-taxable property and for that reason not included in the taxpayer's schedule of property, upon discovering that fact the County Auditor may give notice to the taxpayer and then list it as taxable omitted property. *Crowder v. Riggs*, 153 Ind. 158; 53 N. E. Rep. 1019.

36. *Credits Due Taxpayer.*—Where there are credits due the taxpayer and they only equal his indebtedness, such credits should not be assessed as omitted property. *Moore v. Hewitt*, 147 Ind. 464; 46 N. E. Rep. 905.

37. *Illegal Assessment—Injunction—Premature Action.*—In the absence of a showing of an especial necessity therefore, a court of equity will not grant a writ enjoining the County Auditor from the placing of an alleged illegal assessment upon the tax duplicate. Such a suit being in advance of a threatened levy by the County Treasurer, is premature. *Smith v. Smith*, 150 Ind. 388; 55 N. E. Rep. 183.

39. *Describing Personal Property.*—It has been held that the following entry on the tax books of a county was a sufficient description, viz.: "Omitted personal property for the year 1889, \$20,000." *Brunson v. Starbuck*, 32 Ind. App. 457; 70 N. E. Rep. 163. See note 8.

40. *Presumption as to Notice.*—When it is sought to restrain the collection on property that has been assessed as omitted property by the County Assessor, it will be presumed that the assessor gave the property owner due notice of his intention to assess such property, unless the contrary appears from the evidence; and the burden is upon such property owner to show that no such notice was given. *Brunson v. Starbuck*, 32 Ind. App. 457; 70 N. E. Rep. 162.

41. *Promise to Pay Tax on Omitted Property not Assessed.*—A promise to pay tax on property that has not been listed and approved is void and can not be enforced, even though such property should have been listed for taxation. *State v. Illyes*, 87 Ind. 405.

[Acts 1891, p. 199. Approved and in force March 6, 1891.]

175. Making Tax Duplicate—

143. The Auditor of each county shall, between the first Monday in July and the last day of December, make out a duplicate list of taxes assessed in said county according to the forms which shall be furnished by the Auditor of State; and, in so doing, he shall enter in separate columns:

First. All lands in each civil township, with the names of the owners in alphabetical order, the value of the land without improvements, and opposite to this value of improvements thereon.

Secondly. In like order he shall enter all city and town in-lots and out-lots situated in such township, with the improvements thereon.

Thirdly. In its place, all corporation stock, except stocks in banks, which shall be assessed and taxed in the town or city where the bank is located, as in this act elsewhere provided.

Fourthly. All other personal property subject to taxation, and which shall be charged, together with the poll-tax in the civil

township where the owner resides, but when personal property is required to be listed in a township different from that of the owner's residence, it shall be taxed in the township where listed.

Fifthly. He shall number each original township in regular progression as the same shall stand entered on his duplicate, and the same township shall retain the same number from year to year; and

Sixthly. He shall number each name in each township in regular progression. The County Auditor, in making out such duplicate, shall be careful to enter thereon, all the lands previously entered for taxation, with the valuation thereof, as heretofore assessed, and all such lands as by mistake or neglect or for any other causes, shall have been omitted to be entered; also, all such lands as shall be found to have become subject to taxation since the last assessment, with such valuation as shall be affixed thereto by the Assessor; and he shall enter all personal property according to the list of the last assessment made in conformity to this act, giving a pertinent description of all property thus entered on his duplicate, and duly enter all transfers of land made since the last assessment, and carry into effect all alterations which shall be made in the Assessor's list by the Board of Review. (3 Burns R. S. 1901, §8561.)

1. *Auditor's Copy of Duplicate.*—The copy of the tax duplicate retained by the Auditor is an original record, and is admissible in evidence as such. Standard Oil Co. v. Bretz, 98 Ind. 231.

2. *Presumption.*—It is presumed, in the absence of a showing to the contrary, that specified taxes were placed upon the tax duplicate in the treasurer's hands by the County Auditor. Adams v. Davis, 109 Ind. 10; 9 N. E. Rep. 102.

176. Estimating and Fixing Values—

144. The County Auditor shall estimate in dollars and cents, rejecting fractions of a cent, and set down on such duplicate in one column the State, county, school, township, road, and all other taxes chargeable on the valuation of property contained in such duplicate, including also the poll-tax, for State, county and all other purposes, and he shall set down in a separate column the amount of taxes on all property returned delinquent, specifying the years and the amount remaining unpaid, with the proper penalty on the same added, and shall carry out the aggregate amount in a column of totals. (3 Burns R. S. 1901, §8562.)

177. Installments, How Arranged—

145. He shall set down the amount of taxes charged against each taxpayer in two separate columns; the first installment, embracing all road taxes, and one-half of all other taxes, shall be placed in the first column; and the second installment, embracing the other half, shall be placed in the second column, with a suffi-

cient blank space at the right of each column to write in ink the word "paid," and when payment of either half of such taxes shall be made, the Treasurer shall write in a blank space opposite the word "paid," and shall execute a receipt therefor in the usual form now used, except that it shall state which installment the payment is entitled to apply to, and if for the last installment, shall state upon its face, "in full." (3 Burns R. S. 1901, §8563.)

178. Adding and Apportioning Rules—

146. He shall add on each page of such duplicate the several columns containing the valuation of real and personal estate, taxes, charges, and the number of acres, carrying the same forward from page to page to the close of each township, and at the end of the duplicate he shall recapitulate the several townships and apportion the amount of taxes levied on the property in each township, and set down in separate columns the amount of State, county, school, township, road and all other taxes levied, and add the aggregates of the above for the whole county. (3 Burns R. S. 1901, §8564.)

179. Correcting Errors—

147. He shall, from time to time, correct all errors which he may discover in his duplicate, either in the name of the person charged with taxes, the description of the property, or the amount of the tax charged, and shall add, from time to time, any corrections or additional assessments made on the Assessor's books by the County Assessor, and when such correction is made after the duplicate shall have been delivered to the Treasurer for collection, the Auditor shall give a certificate of such correction, to the Treasurer, who shall make the like correction on his duplicate, and keep such certificate as his voucher on settlement with the Auditor. (3 Burns R. S. 1901, §8565.)

1. *Irregularities.*—Irregularities in making a tax duplicate do not render the same void. Board v. McCarty, 27 Ind. 475.

180. Duplicate to Treasurer—Abstract to State Auditor—

148. He shall cause a copy of such duplicate to be delivered to the Treasurer of his county, on or before the last day of December in each year, and he shall also make out and cause to be transmitted to the Auditor of State, on or before the first day of January in each year, a complete abstract of all the property listed in each township, the valuation thereof, the number of polls, the amount of each kind of tax, and the aggregate thereof in the county, and certify the same, as also the rate of each kind of tax assessed. (3 Burns R. S. 1901, §8566.)

1. *Failure to Deliver Copy.*—Failure to deliver a copy of the duplicate to the Treasurer within the time fixed by law, or irregularities in making the same, do not render it void. Board v. McCarty, 27 Ind. 475.

2. *Justify Treasurer in Collecting Tax.*—Tax duplicates legal on their face justify Treasurers in acting thereunder. *Noland v. Busby*, 28 Ind. 184; *Adams v. Davis*, 109 Ind. 10; 9 N. E. Rep. 162.

3. *Original Duplicate.*—Copies of the tax duplicate in the offices of County Auditors and Treasurers are both original records, and are admissible in evidence as such. *Standard Oil Co. v. Bretz*, 98 Ind. 231.

181. Transfer Book—Indorsements—Fee—

149. The County Auditor shall keep a transfer book, arranged by townships, cities and towns, in which he shall enter a description for the purpose of taxation of all lands that have been conveyed by deed or partition with the date of the conveyance and names of the parties, and he shall indorse on such deed or instrument of conveyance the words, "duly entered for taxation," or that it is "not taxable," or "has already been listed for taxation," and for every such transfer he shall receive from the party recording such instrument a fee of ten cents for each parcel of ground or lot so transferred. He shall take care that all descriptions for the purpose of taxation are correct, and that the owners' names are properly transcribed. Where the property is already in the name of the right owner, and needs no transfer, he shall not receive the fee of ten cents. (3 Burns R. S. 1901, §8567.)

ARTICLE 17—ASSESSMENTS BY TREASURER.

182. How He Shall Assess.

[Acts 1891, p. 190. Approved and in force March 6, 1891.]

182. How He Shall Assess—

182. Whenever the County Treasurer shall discover or receive credible information, or if he shall have reason to believe at any time, that any of the property, real or personal, or the poll of any person, liable to pay tax, has not been assessed by the Assessor, or that any real or personal property has been omitted in the assessment of any year or number of years, from the assessment book or from the tax duplicate, or that any person, company or corporation has, from any cause, omitted to list any part of his, her or their property for any year or number of years, or has, in any year, or number of years, given a false, or incorrect, or partial statement of any of the property required by this act to be listed, or that any real property, by reason of defective description thereof, has failed to pay taxes for any year or number of years, or that the tax for which the said property was liable, has not been paid, or shall discover, before the meeting of the County Board of Review that any of the Assessors have not returned the full value of the assessables of any person required to be listed, or have made any erroneous return of such assessables, he shall report the same forthwith to the County Auditor, whose duty it shall be to correct the tax duplicate in his office, and at the same time to correct, in

like manner, the duplicate in the hands of the County Treasurer, adding such property or polls thereto, and also adding the assessments and valuation thereon. The County Treasurer shall then collect the taxes thereon the same as if they had been assessed by the Assessor. All property so assessed shall be rated at its true cash value. As to notice to the person when not present, if residing in the county, the Treasurer shall be governed by the provisions of the foregoing sections in relation to Assessors and Auditors, but he shall not be required to assess the property upon actual view, or to furnish the owner thereof with a blank list. (3 Burns R. S. 1901, §8600.)

1. *County Assessor.*—For the power of a County Assessor to add omitted property to the tax duplicate or assessment, see Sec. 140.

2. *County Auditor.*—For the power of a County Auditor to add omitted property to the tax duplicate, see Sec. 173.

3. *County Board of Review.*—For the power of a County Board of Review to add omitted property to the tax duplicate or assessment, see Sec. 142.

3a. *Township Assessor.*—For powers of a Township Assessor to assess omitted property, see Sec. 124.

4. *Penalties.*—Penalties can not be added to the taxes assessed on omitted property, until the tax becomes delinquent after it has been assessed. *Gallup v. Schmidt*, 154 Ind. 216; 53 N. E. Rep. 443.

5. *Foregoing Sections.*—The "foregoing sections" referred to in the above section are sections 134, 139 and 173 of this edition of the tax laws.

ARTICLE 18—TAXING OF DOGS.

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| 183. Dogs, Taxes on, Payment. | 190. Keeping Mischievous Dogs—Penalty. |
| 184. Receipt by Assessor—Payment to Trustee. | 191. Harboring Untaxed Dog. |
| 185. Report by Assessor. | 192. Female Dog at Large. |
| 186. Keeping Dog Without Paying Tax, Penalty. | 193. Dog Fund—Fines—Collection. |
| 187. Record of Dogs Not Paid For—Collecting Tax. | 194. Claims for Damages—Appraisal—Penalty. |
| 188. Penalty Against Officers. | 195. Register of Claims—Surplus Funds. |
| 189. False Statement as to Dogs—Penalty. | 196. Killing Roaming Dogs. |
| | 197. Larceny of Dog. |

AN ACT regulating the taxing of dogs and for the protection of sheep, cattle, horses, swine and other live stock and fowls; to provide penalties for its violation; to repeal all laws in conflict.

[Acts 1897, p. 178. Approved March 6, 1897. In force April 14, 1897.]

183. Dogs, Taxes On, Payment—

1. *Be it enacted by the General Assembly of the State of Indiana*, That the Township Assessor shall be required after assessing the property of each property holder of his township as now required by law, to make diligent inquiry as to the number of dogs owned, harbored or kept by the person so assessed. And such person as assessed shall pay immediately to the Township Assessor the sum of one dollar for each male dog or spayed female

dog. And the sum of two dollars for each additional male dog or spayed female dog. And the sum of three dollars for each female dog (unspayed) so owned, harbored or kept. (2 Burns R. S. 1901, §2847.)

1. *Receipt of Section 47.*—This and the following sections of this act repeals, by implication, Section 47 of the general law relating to taxation.

2. *Constitutional.*—This statute is constitutional. Mitchell v. Williams, 27 Ind. 62; Haller v. Sheridan, 27 Ind. 404; State v. Cornnall, 27 Ind. 120; State v. Doe, 79 Ind. 9, 12; 41 Am. Rep. 509.

3. *Dogs Owned by State.*—Dogs owned by the State and used by it in connection with any of the public, penal, charitable, or other institutions maintained by the State are exempt from taxation. Ketcham, 1897, p. 184.

184. Receipt by Assessor—Payment to Trustee—

2. The Township Assessor shall give to each person a receipt for such money paid him, which shall be designated for dog tax, which receipt shall show the person's name who owns, harbors or keeps the dog, the amount paid, and the number, description and kind of dogs paid for, and whether male or female, and the number of each, which receipt shall relieve the person or persons owning, keeping or harboring such dogs for the current year, extending one year from its date or until the next regular township assessment. Such Township Assessor shall keep a record of the person or persons owning dogs and a record of the dogs paid for. And he shall keep a stub record or copy of the receipts given by him for money paid him as dog tax, such stub record shall show the amount paid him. The number of dogs, both male and female, paid for, and the person's name, owning the dogs so paid for. And he shall within five days after the completion of the assessment of his township, each year turn over to the Township Trustee of his township all the records kept by him, relating to the collecting and payment of dog tax, and a copy of all receipts given by him to persons having paid him money as dog tax, and all money received by him as dog tax. (2 Burns R. S. 1901, §2848.)

185. Report by Assessor—

3. He shall report the amount collected by him as dog tax, and turned over to the Township Trustee of his township, to the County Auditor of his county, within three days after making his report to the Township Trustee of his township. The County Auditor shall make a record of the same, and charge the amount against the Township Trustee of the proper township, as receipts from the dog fund. (2 Burns R. S. 1901, §2849.)

186. Keeping Dog Without Paying Tax, Penalty—

4. Any person who shall keep or harbor any dog, and shall not have paid the Township Assessor the tax as above specified

and received his receipt for such payment, shall upon complaint of any resident of the county be subject to a fine of not less than five or more than twenty dollars. (2 Burns R. S. 1901, §2850.)

187. Record of Dogs Not Paid For—Collecting Tax—

5. It shall be the duty of the Township Assessor to keep a record of all dogs that shall not be paid for, by whom owned, harbored or kept, and the number of such dogs and the kind, whether male or female, and he shall report the same to the Township Trustee of his township at the time of making his other report, as above provided, whose duty it shall be to report the same to the Prosecuting Attorney of his county, or district, or his deputy, who shall bring an action before any Justice of the Peace of his county or in the Circuit Court of his county, against such persons, upon conviction thereof, and he shall receive the sum of five dollars for each case so prosecuted and such fee shall be charged as part of the judgment and cost against such person so prosecuted: Provided, That if any person shall acquire, own, harbor or keep any dog after the Assessor shall have completed his assessment, he shall report such dog to and pay to the Township Trustee of his township the amount of dog tax as above provided and receive his receipt for the same, which receipt shall exempt him from further payment of dog tax on dogs described in said receipt until the time of the next assessment of his township. (2 Burns R. S. 1901, §2851.)

1. *Dog Born After May 15th.*—Where a dog is born after May 15th of any year, on its attaining the age of three months its owner, keeper or harborer must report it to the township trustee, pay the regular tax for the year and obtain his receipt; and when the township assessor calls on him on or after the first of March next following he must make a similar report to the township assessor and pay him a like tax for the current tax year.

2. *Owner Purchasing a Dog Must Pay Tax on It.*—One who purchases a dog must report it to the assessor and pay the tax thereon, if the purchase was made before May 15th. If the purchase be made after that date, then he must report such dog and pay the tax thereon to the township trustee, although the previous owner may have paid the tax thereon for that year. Each successive owner must report the dog to the proper assessor and pay the tax thereon.

3. *Receipt Not Transferable.*—A receipt for tax paid on a dog is not transferable, not even to the person who may have purchased such dog.

4. *Opinion of Court.*—"Section one [§183] of the statute makes it the duty of the township assessor, at the time of making the annual township assessment, to diligently inquire of each person assessed in regard to the number of dogs owned, harbored or kept by such person. If such person either owned, harbored or kept any dog or dogs on the 1st day of March, the beginning of the current assessment year, or on any day thereafter up to and including the date of his assessment, then he must report such dog or dogs to the assessor and immediately pay to such officer the amount of tax on such dog as fixed or prescribed by section 1 [§183] of the statute. Upon such payment being made, the assessor, under section 2 [§184], is required to give to such owner, harborer, or keeper a receipt as therein provided. This receipt, as the section provides, shall relieve the person, or persons, owning, keeping or harboring such dog for the current year, or until the next regular township

assessment, in other words, the law intended or contemplated that the person to whom such receipt is given or issued by the assessor shall be relieved from any further liability on or penalty arising out of the owning, keeping or harboring upon his or her part of the particular dog or dogs described in the receipt during the then current assessment year, which will close or expire on the last day of February next following. The receipt so authorized to be given the law intends shall be confined to the person to whom it is issued and is not transferable and can in no manner inure to the relief or exemption of any other person who may subsequently during the said current year, own, keep or harbor the particular dog or dogs therein described. Any person, other than the one to whom the receipt is given, who at any time thereafter, before the close of the said current year, becomes the owner, harbinger or keeper of the particular dog described in the receipt, must, in order to relieve himself from liability and prosecution under the statute, report the dog to either the township assessor or the township trustee, as the case may be, and pay the tax exacted by the law and secure the proper receipt. Otherwise he will subject himself to the penalty provided by section 9 [§191]. Paying the tax as required by the statute and receiving the receipt therefor is made indispensable upon the part of a person who at any time during such current year either owns, harbors or keeps a dog over the age of three months. It will be noted that by section 5 [§187] it becomes the imperative duty of any person who, after the completion of the township assessment, acquires, owns, harbors or keeps any dog over the age of three months, to report such dog to the trustee of his township and pay the tax exacted by section 1 [§183] of the statute and obtain from such officer the proper receipt. The duty on the part of the person who acquires, owns, harbors or keeps any dog after the time mentioned in said section to report to the trustee and pay the tax fixed as provided by section 1 [§183], is imposed by the law without any regard as to the age of the particular dog at the close or completion of the township assessment and regardless of the fact as to whether the dog was born prior to the beginning of the period of the assessment of the township, as fixed by law, or during said period or after the close or completion of said assessment. The receipt given by the trustee, as provided by section 5 [§187], will serve to exempt the person to whom it is issued from any further payment of tax or penalty on the particular dog described in said receipt until the time of the next township assessment, which period, as heretofore shown, under the law begins on the first day of March next following." *State v. Sharp*, 82 N. E. Rep. —, decided October 16, 1907.

188. Penalty Against Officers—

6. If any Township Trustee or Township Assessor shall fail to perform the duties as above provided, they shall be liable to a fine of not less than ten nor more than twenty dollars. (2 Burns R. S. 1901, §2852.)

189. False Statements as to Dogs—Penalty—

7. Every person liable to taxation in any township in the State of Indiana, and residing therein when listed for taxation, shall make and subscribe to an oath to the Township Assessor, in which he shall state the number of dogs, spayed and unspayed over the age of three months, owned, kept and harbored by such person, and any person who shall make a false statement to the Assessor or Township Trustee as to the number, kind and sex of such dogs so owned, kept or harbored by him, shall be fined in any amount not exceeding one hundred dollars. (2 Burns R. S. 1901, §2853.)

190. Keeping Mischievous Dog—Penalty—

8. Any dog that is known to have killed, maimed, chased or worried any sheep, cattle, horses, swine or other live stock, or fowls, unless accompanied by his master or some other person, may be killed by any person and any person who shall own, keep or harbor any dog, after he knows that such dog has killed or maimed, chased or worried any sheep, cattle, horses, swine, or other live stock or fowls, shall be fined in any sum not less than ten nor more than fifty dollars. (2 Burns R. S. 1901, §2854.)

191. Harboring Untaxed Dog—

9. It shall be a misdemeanor for any person who does not hold the Township Assessor's or Township Trustee's receipt, showing that the required tax has been paid for the same, as provided in this act, to keep, harbor, board or feed, or permit any dog to stay about his, her or their premises and upon complaint they shall be liable to a fine in any sum not exceeding ten dollars. (2 Burns R. S. 1901, §2855.)

1. *Indictment*.—An indictment which follows the language of the above section is sufficient. *State v. Thompson*, 25 Ind. App. 581; 53 N. E. Rep. 723.

192. Female Dog at Large—

10. Any person owning or harboring any female dog, who shall allow such female dog to run at large during any period of rutting or when in heat, shall be fined not less than five nor more than twenty dollars. (2 Burns R. S. 1901, §2856.)

193. Dog Fund—Fines—Collection—

11. All money derived by the taxing of dogs by the Township Assessor or Township Trustee as provided by this act, shall constitute a fund known as the Dog Fund, which shall be used for the payment of damages sustained by owners of sheep, cattle, horses, swine and other live stock, or fowls killed, maimed or damaged by dogs, within any township of the State of Indiana, each Township Trustee shall collect all fines belonging to his township from the different courts, where such fines have been assessed and paid: Provided, That no damages shall be assessed or paid on sheep except where individual damage exists or is shown. (2 Burns R. S. 1901, §2857.)

194. Claims for Damages—Appraisement—

12. The owners of sheep, cattle, swine, horses, and other live stock or fowls, killed, maimed or damaged by dogs, shall within ten days from the time thereof, report to the trustee of his township, under oath, in which he shall state the number and age as he believes, and the value of such stock or fowls so killed or damaged, and the damages sustained on account of such stock or

fowls killed or maimed, in which affidavit he must be joined by two disinterested and reputable freeholders or householders, and any person or persons who shall make any false statements of such damages, shall upon conviction, be fined in any sum not exceeding one hundred dollars, to which may be added imprisonment in the county jail for any term not exceeding thirty days: Provided, however, That no appraisal shall exceed the actual cash value for which such live stock or fowls would have sold for if placed on the market at the time such damage was sustained: Provided, further, That if any township trustee deems the appraisal of such live stock or fowls so killed or maimed to be excessive he shall tender to the owner or owners, or credit upon his books such amount which in his judgment is equal to the injuries sustained and if in any action at law by the owners thereof for the recovery of such damages said owner shall fail to recover a judgment exclusive of costs for an amount greater than the amount so tendered the defendant shall recover costs of such suit. (2 Burns R. S. 1901, §2858.)

195. Register of Claims—Surplus Fund—

13. The trustees shall register all losses in the order in which they are reported: Provided, That no person shall receive pay for sheep, horses, cattle, swine or other live stock or fowls killed or maimed by any dog or dogs owned or harbored by himself: Provided, further, That the dog fund heretofore collected shall be added to and applied with the fund arising under the provisions of this act. And when it shall so occur on the first Monday of March of any year in any township in the State of Indiana that said fund shall accumulate to an amount exceeding one hundred dollars over and above orders drawn on the same, the surplus aforesaid shall be paid and transferred to the County Treasurer of the county in which such township is located and the fund arising from such surplus from the township of the county shall constitute a county dog fund and shall be distributed among the townships of the county in which the orders drawn against the dog fund exceed the money on hand, this distribution shall be made on the second Monday in March of each year, and if said county dog fund be insufficient to pay for all the live stock or fowls maimed or killed by dogs of all the townships the distribution shall be made in the ratio of the orders drawn against the dog fund of the townships and unpaid and unprovided for, which ratio shall be obtained from the report of the trustees of the townships made to the Auditor of the county, which it is hereby directed shall be made by each Township Trustee of the county upon the first Monday of March of each year, which report shall show all receipts into the dog fund of his township, and all orders drawn against the same

in the order in which they were drawn. And when it shall occur upon the second Monday in March of any year that there is a surplus left of the county dog fund after provisions have been made for the payment of all the live stock or fowls killed or maimed, of all the townships of the county, such surplus shall be distributed for the schools of the county in the same manner, the common school revenue of such county is distributed. (2 Burns R. S. 1901, §2859.)

196. Killing Roaming Dog—

14. If any dog shall be found roaming over the country unattended by his master or owner, or his owner's agent, it shall be lawful to kill such dog. (2 Burns R. S. 1901, §2860.)

[Acts 1905, p. 967. Approved March 10, 1905. In force April 15, 1905.]

197. Larceny of Dog—

379. Whoever feloniously steals, takes, or carries away any dog, male or female, upon which dog no taxes are delinquent, and which shall have been listed for taxation at its true cash value as personal property is listed, shall, on conviction, suffer the punishment prescribed for larceny: Provided, That this section shall not apply to any dog that is shown to have chased, worried, maimed or killed sheep.

ARTICLE 19—REAL ESTATE ENCUMBERED BY MORTGAGE.

198. Mortgaged	Indebtedness	Ex-empt.	200. Auditor's Duty.
199. Statement Under Oath.			201. False Statement, Penalty.
			202. Emergency.

AN ACT concerning the taxation of real estate encumbered by mortgage, and declaring an emergency.

[Acts 1890, p. 422. Became a law by lapse of time without the Governor's signature, March 5, 1890.]

198. Mortgage Indebtedness Exempt—

1. *Be it enacted by the General Assembly of the State of Indiana*, That any person being the owner of real estate liable for taxation within the State of Indiana, and being indebted in any sum, secured by mortgage upon real estate, may have the amount of such mortgage indebtedness, not exceeding seven hundred dollars, existing and unpaid upon the first day of March of any year, deducted from the assessed valuation of mortgage premises for that year, and the amount of such valuation remaining after such deduction shall have been made shall form the basis for assessment and taxation for said real estate for said year: Provided, That no deduction shall be allowed greater than one-half of such

assessed valuation of said real estate. (As amended February 25, 1903. Acts 1903, p. 49; 4 Burns Supp., §8417a.)

1. *Constitutional.*—The Supreme Court of this State has held this statute constitutional. *State v. Smith*, 158 Ind. 543 (63 N. E. Rep. 25; 64 N. E. Rep. 18); *Smith v. State*, 159 Ind. 695 (64 N. E. Rep. 1127). On appeal of the first case cited to the Supreme Court of the United States, the appeal was dismissed, and no decision was rendered on the validity of this statute. *Smith v. Indiana*, 24 Sup. Ct. Rep. 51.

199. Statement Under Oath—

2. Any person desiring to avail himself, or herself, of the provisions of this act shall, between the first day of March and the first day of May of each year, file with the auditor of the county wherein said real estate is situate a sworn statement of the amount of such mortgage indebtedness existing and unpaid on the first day of March of that year, giving the name and residence of the mortgagee, and shall also give the name and residence of the assignee or bona fide owner or holder of said mortgage, if known, and if not known, said person shall state that fact, and shall also state the record and page where said mortgage is recorded, and a brief description of the real estate upon which such incumbrance exists. (3 Burns R. S. 1901, §8417b.)

200. Auditor's Duty—

3. The County Auditor with whom such statement is filed, in case the money, notes or credits evidenced by such mortgage indebtedness be liable for taxation in any county in the State of Indiana other than the one wherein such real estate is situate, shall immediately certify and transmit a copy of such sworn statement to the auditor of the county wherein the mortgagee, assignee or bona fide holder or owner of said mortgage resides, or wherein the money, notes or credits evidenced by mortgage is otherwise taxable. (3 Burns R. S. 1901, §8417c.)

201. False Statement—Penalty—

4. Any person who shall wilfully make a false statement of the facts provided for in section 2 of this act shall be deemed guilty of misdemeanor, and upon conviction thereof shall be fined in any sum not less than fifty, nor more than five hundred dollars, to which may be added imprisonment in the county jail for any term not exceeding six months. (3 Burns R. S. 1901, §8417d.)

202. Emergency—

5. Whereas, an emergency exists for an immediate taking effect of this act, the same shall be in force from and after its passage.

1. *Mortgage Deduction Law.*—a. The affidavit required by Section 2 of this law may be sworn to before any person authorized to administer oaths (this includes notaries public), and must be filed with the Auditor before the first day of May and on or after the first day of March of each year showing the mortgage indebtedness on said first day of March. Said affidavit must be sworn

to by the person securing the deduction personally. A husband can not make an affidavit for his wife, nor can she for him.

b. The Auditor or Recorder is not required to furnish blanks to persons wishing to secure the benefits of said deduction, but the Auditor may swear persons to the affidavit required and charge a fee therefor of 25 cents, which fee, however, belongs to the State and not to the Auditor personally.

c. The Assessor has nothing whatever to do with the mortgage deduction law, and is not authorized to swear persons to the affidavit required by Section 2.

d. Under no circumstances can one person legally secure more than \$700 deduction under this law, no matter how many mortgages he may have given or assumed. Neither can he deduct his mortgage indebtedness from the assessed valuation of his real estate and then use that portion of his mortgage indebtedness so deducted as a deduction from his personal credit.

e. If a husband and wife own real estate together, as tenants by entireties, they must join in the affidavit, and are entitled jointly to not more than \$700 deduction. That is, each can not secure the benefit of \$700. But if the husband and wife own real estate separately, they are each entitled to the deduction provided for in the law, as are all other taxpayers owning real estate in their own names.

f. Firms or partnerships (limited or otherwise) and corporations are not entitled to any deduction upon their mortgage indebtedness under this law.

g. Improvements on real estate are technically part of the real estate, provided such improvements are permanent. Therefore, in ascertaining the value of mortgage premises, all improvements should be taken into consideration.

h. Under no circumstances can a deduction from real estate exceed one-half the appraised value of such property for taxation. This means the appraised value as shown on the duplicate for the year in which the deduction is prayed.

i. Man and wife may sign affidavit as owners as tenants by entireties of property and obtain deduction of \$700, or not to exceed one-half the value of the property.

j. One joint owner can not make an affidavit for the benefit of the other joint owner. It is a personal privilege.

k. A guardian can make an affidavit for his ward.

l. One heir can not make an affidavit for all the heirs.

m. Each heir may make deduction for his proportion of an undivided interest in lands. Each heir, however, can not claim a deduction of \$700 from the entire value of lands owned by heirs as tenants in common.

n. If the description of the land is substantially correct, the deduction should be made. The description should be sufficient to show the land intended to be described.

o. It is simply the duty of the Auditor to receive the affidavits provided for in the mortgage deduction law for filing. The Board of Review passes on the validity of the claim for deduction.

p. The word "mortgage," as used in this law, includes mortgages held by non-residents of this State, as well as school fund mortgages and mortgages held by building associations. But only one claim for deduction can be made upon any one mortgage. A bond for a deed, a vendor's lien, or a ditch assessment is not a mortgage, and does not entitle the owner of the land to a deduction thereunder.

q. One person can not make an affidavit for the benefit of another.

r. The words "assessed valuation of the mortgage premises" include improvements.

s. The taxpayer is entitled to his deduction, no matter how many tracts his land may be divided into, but he can claim but one deduction; i. e., he can not have more than one deduction, no matter how many mortgages he may have on various tracts of land, or upon the same tract.

2. *Husband and Wife Separate and Joint Exemptions.*—A husband and wife may each claim \$700 mortgage exemption on their separate properties; but they can not in addition to these exemptions jointly claim an exemption upon property owned by them jointly. *Taylor*, 1902, p. 116.

ARTICLE 20—NAVIGATION COMPANIES.

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| 203. Navigation Companies. | 218. Shares and Interest. |
| 204. Articles of Association. | 219. Certificate as to Stock. |
| 205. Filing Articles, Fee. | 220. Sale of Stock. |
| 206. Increase of Stock. | 221. Redeeming Stock. |
| 207. Directors. | 222. Stock Not Voted. |
| 208. Organizing Board. | 223. Certificate of Redemption. |
| 209. Seal, Corporate Powers. | 224. Tax on Tonnage. |
| 210. Books, Inspection. | 225. Taxing Property. |
| 211. By-Laws. | 226. Tonnage Tax. |
| 212. Vacancies. | 227. Return for Taxation. |
| 213. Vote at Elections. | 228. Registration Certificates. |
| 214. Closing Transfers. | 229. Certificates of Registration. |
| 215. Stock and Transfers. | 230. Failure to Return, Penalty. |
| 216. Liability for Debts. | 231. False Return. |
| 217. Preferred Stock. | 232. Emergency. |

AN ACT for the incorporation of navigation companies, providing a method for their taxation, and providing a method for the taxation of shipping and declaring an emergency.

[Acts 1901, p. 181. Approved and in force March 7, 1901.]

203. Navigation Companies—

1. *Be it enacted by the General Assembly of the State of Indiana*, That any number of persons may form themselves into a corporation for the purpose of engaging in commerce upon any navigable waters. (2 Burns R. S. 1901, §5449a.)

204. Articles of Association—

2. The persons proposing to organize any such navigation company shall make, sign and acknowledge before some officer capable to take acknowledgment of deeds, a certificate in writing, which shall state the corporate name of the company, the object of its formation, the amount of capital stock, the number of shares into which it is to be divided, the home office or domicile of the company and the names of the directors who shall serve during the first year. (2 Burns R. S. 1901, §5449b.)

205. Filing Articles—Fee—

3. Such articles of association shall be executed in duplicate and one copy filed with the Secretary of State and one copy with the Recorder of the county in which is located the home office of the company. The fee of the State, payable to the Secretary of State, for the filing of articles of association shall be one dollar upon every thousand dollars of the capital stock of such corporation, but it shall in no event be less than ten dollars. (2 Burns R. S. 1901, §5449c.)

206. Increase of Stock—

4. Any such company may, by a vote of two-thirds of its stockholders, at any stockholders' meeting, increase or decrease its

capital stock; such increase or decrease to take effect from the time a certificate of the adoption of a resolution to that effect, signed by the president and secretary of the board of directors and evidenced by the seal of the corporation, shall have been filed in the office of the Secretary of State of the State of Indiana, and the fee of the State for filing any certificate of increase shall be one dollar per thousand of increase. (2 Burns R. S. 1901, §5449d.)

207. Directors—

5. Not less than three nor more than five directors shall be elected by the stockholders of such company, who shall hold their office for the term of one year and until their successors are elected. Notice of the election or directors shall be given by publication for one week before such election in some newspaper published in the county in which the principal office of the company is located. (2 Burns R. S. 1901, §5449e.)

208. Organizing Board—

6. The board of directors shall organize by choosing a president, secretary and such other officers as they may deem necessary, including as many ship's husbands as they may deem prudent. (2 Burns R. S. 1901, §5449f.)

209. Seal, Corporate Power—

7. Such corporations may have a common seal, and the same use, alter or change at pleasure, and may be capable of purchasing, holding, using and conveying, mortgaging and leasing any estate, real and personal, that may by said board of directors be deemed necessary to the management of the business of the company, and in their corporate names shall be capable of suing and being sued, pleading and being impleaded, defending and being defended, in any court of competent jurisdiction. (2 Burns R. S. 1901, §5449g.)

210. Books, Inspection—

8. The directors shall at all times keep, or cause to be kept, at some proper place agreed on by them, proper books of account, in which shall be entered all the transactions of the company; which books shall at all times be subject to the inspection of the stockholders. (2 Burns R. S. 1901, §5449h.)

211. By-Laws—

9. The directors shall provide a code of by-laws for the government of the corporation; which by-laws, when approved by a majority of the stockholders, shall be binding until altered or amended by a vote of the stockholders at any regular or special meeting. (2 Burns R. S. 1901, §5449i.)

212. Vacancies—

10. The directors shall fill all vacancies which may occur in their body. They may sit on their own adjournments or on a call of the president, and when the president or secretary is absent the directors may appoint one of their members to fill the vacancy. The president may, if he deem it advisable for the interests of the company, or a majority of the directors may, call a meeting of the stockholders at any time. (2 Burns R. S. 1901, §5449j.)

213. Vote at Elections—

11. At all elections of directors, and upon all propositions to amend the by-laws or to increase or decrease the stock, or to issue preferred stock, each stockholder shall be entitled to vote in person or by proxy, in the manner and form prescribed by the by-laws, and shall possess one vote for each share of stock appearing in his name on the books of the company. (2 Burns R. S. 1901, §5449k.)

214. Closing Transfers—

12. Three days before any meeting of stockholders the stock books of such companies shall be closed, for the purpose of transferring stock, and shall remain closed until after the adjournment of such meeting. (2 Burns R. S. 1901, §5449l.)

215. Stock and Transfers—

13. Certificates of stock shall be given to the stockholders, which shall be evidence of the stock held, and shall be signed by the president and secretary, over the seal of the company, the same to be transferable on the books of the company only in person or by attorney; but such stock shall at all times be held by the company for any delinquency in the payment of any assessments ordered by the board of directors. (2 Burns R. S. 1901, §5449m.)

216. Liability for Debts—

14. The stockholders of such company shall be individually liable, jointly and severally, for all debts owing mariners, boatmen, laborers and servants for services rendered. (2 Burns R. S. 1901, §5449n.)

217. Preferred Stock—

15. Such company may at any time, by a vote of two-thirds of its stockholders, create and issue shares of preferred stock in any amount not exceeding double the common stock of the company. (2 Burns R. S. 1901, §5449o.)

218. Shares and Interest—

16. Such preferred stock may be provided for at the time of the incorporation of the company, in which case the amount

shall be stated in the articles of association, and the number of shares into which it is to be divided, together with the rate of interest to which dividends are limited. (2 Burns R. S. 1901, §5449p.)

219. Certificate as to Stock—

17. In case such preferred stock be authorized subsequent to the incorporation of the company, the resolution providing for the issuance of the preferred stock shall be duly certified by the president and secretary of the company, over its corporate seal, to the Secretary of State, who shall be paid for the State a fee of one dollar per thousand for all preferred stock authorized to be issued by such resolution. Such certificate shall show the amount of the preferred stock authorized, the number of shares into which it is to be divided and the amount of each share. (2 Burns R. S. 1901, §5449q.)

220. Sale of Stock—

18. Such stockholders may, by a vote of the holders of a majority of the common stock, authorize and empower the board of directors to dispose of and issue such preferred stock, upon such terms and conditions as such board of directors may deem best. (2 Burns R. S. 1901, §5449r.)

221. Redeeming Stock—

19. Such preferred stock shall be subject to redemption at par at such time or times, and upon such terms and conditions, as shall be expressed in the certificates thereof, and the holders of such preferred stock shall be entitled to receive, and said company shall be bound to pay thereon, such semiannual sum or dividend as may be expressed in the certificates, not exceeding four per centum before any dividend shall be set aside or paid on the common stock of such company, and in no event shall the holders of such preferred stock be individually or personally liable for the debts or other liabilities of the company; but in case of insolvency, or upon the dissolution of such company, all debts and other liabilities shall be paid in preference to such preferred stock. Such preferred stock, however, shall at all times have priority in payment out of the assets of such company, over the common stock thereof, for the full face value, together with all arrearages of interest or dividends due thereon. (2 Burns R. S. 1901, §5449s.)

222. Stock Not Voted—

20. Such preferred stock shall not be voted at any meeting of such company, nor shall the holders thereof, as such, have any voice in the management of the affairs of such company, excepting,

however, that such company shall not have authority to convey its real estate or mortgage any of its property without the written consent of the holders of a majority of the shares of such preferred stock; nor shall such company, without such consent, declare any dividend upon its common stock that will impair its capital. Such preferred stock shall not entitle the holder thereof to any interest in the assets of such company beyond the par or face value of such preferred stock, together with all arrearages of interest or dividends due thereon. (2 Burns R. S. 1901, §5449t.)

223. Certificate of Redemption—

21. When any such company has redeemed the preferred stock issued by it, its directors shall, within thirty days thereafter, cause to be filed with the Secretary of State, their certificates in writing as directors of such company, duly acknowledged, certifying that such preferred stock has been redeemed; for filing which certificate the Secretary of State shall receive, for the State, a fee of one dollar; and in default of filing such certificate the directors of such company shall be jointly and severally liable for all debts of such company, contracted after said thirty days and before such certificate is filed. (2 Burns R. S. 1901, §5449u.)

224. Tax on Tonnage—

22. Such companies shall pay into the State Treasury annually, on or before the first day of June, a sum equal to three cents per net ton of the registered tonnage of all vessels owned by such companies; such payment to be received in lieu of all other taxes, except as hereinafter provided, and no further assessment shall be made by any officer upon any vessel, barge, boat or other water craft belonging to such companies. (2 Burns R. S. 1901, §5449v.)

1. *Water Craft*.—Listing, see Sec. 24.

225. Taxing Property—

23. The method of taxation upon the net tonnage of vessels being in lieu of other taxation, the capital stock of such companies shall not be assessed or taxed, but such companies shall return for taxation at their home offices all personal property of every kind and description owned by said companies, excepting vessels and other actual tangible property outside the State of Indiana; which property shall be assessed to such companies as other personal property is taxed. (2 Burns R. S. 1901, §5449w.)

226. Tonnage Tax—

24. All ships and other vessels engaged in commerce and owned or registered under the navigation laws of the United States at any port in the State of Indiana, shall be taxed as herein-

before provided, at the rate of three cents per net ton of the registered tonnage of the vessel, and all owners of such ships shall make returns as in this act provided. (2 Burns R. S. 1901, §5449x.)

227. Return for Taxation—

25. Every navigation company incorporated under this act, and all owners of ships and other vessels registered in Indiana under the laws of the United States shall annually, on or before the first day of July, file with the Auditor of State a verified statement in writing containing the name, port of hail, and the tonnage of every barge, boat or other water craft owned by such company, individual or partnership on the first day of May immediately preceding, and shall thereupon pay into the State Treasury a sum equal to three cents per net ton of the registered tonnage of such vessel, and the treasurer shall thereupon issue his receipt therefor; which receipt shall show that such payment is in full for all taxes assessed against such vessel or vessels, and no other returns for taxation shall be required from navigation companies organized under this act than such as are hereinbefore provided for. (2 Burns R. S. 1901, §5449y.)

228. Registration Certificate—

26. Every such company shall file with the Auditor of State, when it makes its first return for taxation, a certified copy of the most recent registration certificate of every vessel owned by said company and registered in the State of Indiana, and annually thereafter shall file certified copies of all registration certificates issued to such navigation company during the previous year. (2 Burns R. S. 1901, §5449z.)

229. Certificate of Registration—

27. Other owners of vessels shall file similar certified copies of registration certificates in order to avail themselves of the benefit of this act. (2 Burns R. S. 1901, §5449a1.)

230. Failure to Return, Penalty—

28. In case any navigation company organized under this act shall fail, for thirty days after the first day of July in any year, to make a return as hereinbefore provided, and to pay the tax hereinbefore provided for, such fact shall be reported by the Auditor of State to the Attorney-General who shall immediately proceed to institute proceedings against such company for the sequestration of its property and the forfeiture of its charter and its final dissolution. In any such action a penalty of five hundred dollars may be recovered against such company in addition to whatever taxes may be found delinquent. (2 Burns R. S. 1901, §5449b1.)

231. False Return—

29. In case any company shall make a false or fraudulent return of its net tonnage, it shall be subject to a penalty of one thousand dollars, to be recovered by the Attorney-General, in the name of the State, in any court of justice. (2 Burns R. S. 1901, §5449e1.)

232. Emergency—

30. Inasmuch as an emergency exists for the immediate taking effect of this act, the same shall be in full force and effect from and after its passage.

ARTICLE 21—STATISTICS.

- | | |
|---|-----------------|
| 233. Blanks—Duty of County Auditors and Township Assessors. | 234. Penalties. |
| | 235. Emergency. |

AN ACT concerning statistics, providing for the performance of certain duties by the Chief of the Bureau of Statistics, County Auditors, Township Assessors, and all other persons authorized by the Chief of the Bureau of Statistics, to collect statistics, providing for the enforcement of such duties, and declaring an emergency.

[Acts 1895, p. 302. Approved and in force March 11, 1895.]

233. Blanks—Duty of County Auditor and Township Assessor—

1. *Be it enacted by the General Assembly of the State of Indiana*, That the Chief of the Bureau of Statistics shall annually provide the form of such blanks as in his judgment may be necessary for the information of the Bureau of Statistics, and shall, between the fifteenth day of January and the fifteenth day of March of each year, furnish to each of the County Auditors in the State a form of such blank, and it shall be the duty of the County Auditor of each county in the State to cause to be printed such blanks, and deliver a sufficient number thereof to each of the Township Assessors in his county, at the same time that he delivers to them the blanks for the assessment for taxation, and such Township Assessors shall, in connection with obtaining the lists for taxation cause to be filled out the blanks so furnished to him by the Auditor, with the information required to be furnished, such information, however, being for statistical purposes in relation to agriculture and such matters as may be required; and he shall enter the totals in a report which he shall transmit to the Chief of the Bureau of Statistics on or before the first day of July of each year. (3 Burns R. S. 1901, §7759d.)

234. Penalties—

2. Any person or persons authorized by the Bureau to collect statistics or to answer questions relating thereto, who shall neglect

or refuse to make true returns shall be subject to the penalties now provided by law for such neglect or refusal. (3 Burns R. S. 1901, §7759e.)

235. Emergency—

3. Whereas, an emergency exists for the immediate taking effect of this act, the same shall, therefore, be in force from and after its passage.

ARTICLE 22—MISCELLANEOUS.

- | | |
|---|---|
| 236. Cities Governed by General Tax Laws. | 239. Officers Neglecting Duty. |
| 237. Perjury. | 240. Forms. |
| 238. Officers Overvaluing Property. | 241. Omitted Property — Cost of Collecting. |

[Acts 1891, p. 199. Approved and in force March 6, 1891.]

236. Cities Governed by General Tax Laws—

254. Cities shall be governed by the provisions of this law, in regard to the matters embraced therein, so far as the same are applicable, and the duties required by the terms of this act to be done by the county officers, shall be performed by the corresponding officers of each city in regard to the assessment and collection of taxes, and all matters pertaining thereto: *Provided*, That all city taxes shall be paid on or before the third Monday in April of each year, unless the Common Council shall, by ordinance or resolution, determine otherwise, as provided by law. *And provided further*, That the office of City Assessor and the City Board of Equalization are hereby abolished and the assessment of real and personal property, as made and returned by the Township Assessor, shall serve as the assessment for city purposes, and the proper city officers shall have access to the Assessor's books and to the tax duplicates in the County Auditor's office, for the purpose of transcribing therefrom a list of the property assessed, as the same shall have been equalized by the Board of Review and the State Board of Tax Commissioners. (3 Burns R. S. 1901, §8672.)

1. *Other Statutes.*—For other tax statutes on this same subject, relating to towns, see Acts 1905, p. 235, Sec. 37 (4 Burns Supp., §3806), and relating to this, see Acts 1905, p. 364, Secs. 199 to 201 (4 Burns Supp., §§3624 to 3626).

2. *Omitted Property.*—Clerks of cities are authorized to give notice to persons whose property has been omitted to be assessed for municipal purposes, and to assess such omitted property, such clerks having all the powers in that respect as are conferred by the general tax law on County Auditors. *City of Delphi v. Bowen*, 138 Ind. 235; 36 N. E. Rep. 761.

3. *Municipal Levies, When to be Made.*—Municipal levies, under the general tax law, can not be made until after the work of the county board of review has been completed and its conclusions are available in guiding the local authorities. *Smith*, 1892, p. 49.

237. Perjury—

255. Any person who, under any of the proceedings required or permitted by this act, shall willfully swear falsely, shall be guilty of perjury and subject to all its penalties. (3 Burns R. S. 1901, §8673.)

238. Officers Overvaluing Property—

256. Any Assessor or member of a Board of Review, or of a Board of Tax Commissioners, who shall willfully assess any property at more or less than [than] what he believes to be its true cash value, as the same is defined in this act, shall be guilty of a misdemeanor, and on conviction thereof he shall be punished by a fine not exceeding three hundred dollars, or by imprisonment in the county jail not more than one year, or both, in the discretion of the court. (3 Burns R. S. 1901, §8674.)

239. Officers Neglecting Duty—

257. Any officer who shall willfully neglect or refuse to perform any of the duties imposed on him by this act, when no other provision is made herein, be guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two hundred dollars, or both, in the discretion of the Court, and shall be liable to any person injured thereby to the full extent of the damages sustained. (3 Burns R. S. 1901, §8675.)

240. Forms—

258. The State Board of Tax Commissioners is hereby authorized to prepare for the use of Assessors a more complete and perfect form of "schedule of property" than that set out in section 53 of this act, with a view of securing a full assessment of all the property of the State; and all County Auditors are directed to use such form in preparing blanks for the use of Assessors. Said Board is also authorized to prepare in like manner a new form of tax receipt for the use of County Treasurers, which form of receipt, when so prepared, shall be used by all County Treasurers: *Provided*, That for the assessment and collection of taxes for the year 1891, the forms heretofore in use may be continued as far as practicable, subject, however, to all provisions of this act. (3 Burns R. S. 1901, §8676.)

1. *Section 53.*—Section "53" referred to in the above section is Section 63 of this edition of the tax laws.

2. *Assessing Life Insurance Policies.*—Under this section the State Board of Tax Commissioners are not authorized to prescribe a form of "schedule of property" so as to assess life insurance policies. *State Board v. Holliday*, 150 Ind. 216; 49 N. E. Rep. 14; 42 L. R. A. 826.

[1905, p. 15. Approved and in force February 17, 1905.]

241. Omitted Property—Costs of Collecting Tax—

1. Where boards of county commissioners in this state have made or may hereafter make contracts for the discovery of, and report for assessment and taxation, omitted property and cause the taxes to be collected upon the same, there shall be deducted from the gross amount of said taxes so collected the total cost and expense of such investigation and collection and the remainder shall be distributed pro rata among all the funds entitled to receive the same: *Provided*, That the provisions of this act shall not be construed for the auditor of state and the county treasurers of the state. (4 Burns Supp., §8526a.)

1. *Cases.*—See Sec. 140, note 21, for citation of cases.

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